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ABSTRACT

As a service to the community to protect the legal rights of students, this manual is designed to provide the legal information New York state parents and professionals need in order to become more effective educational advocates. It is not intended as a definitive legal resource, but rather as a guide for structuring a legally sound argument to ensure that every student's educational rights are honored. The manual gives an overview of student educational entitlements and provides suggestions to assist advocates and parents in speaking on behalf of their children. It explains New York state and federal legislation and the judicial cases interpreting laws that comprise educational entitlement. The manual also presents guidance on bringing the art of negotiation to advocacy efforts. Specific issues treated include the right to education and compulsory education, mandatory testing and graduation requirements, access to records, school discipline, special instructional services, services for students with disabilities, and disciplinary exclusions of handicapped children. (LH)

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# EDUCATION LAW MANUAL:

## An Advocate's Guide for New York State Parents and Professionals

**By Mary Mackintosh, Esq.**
**Legal Counsel**

SO 025127

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## G. When to Seek Professional Assistance

There are certain circumstances in which parents and advocates are advised to seek professional advice. These include, but are not limited to, cases in which:

- A student suspension is followed by a Superintendent's Hearing;
- Civil or criminal charges are pending in the court system;
- Protracted negotiations yield little or no improvement; or
- Appropriate services are repeatedly denied.

In these cases, if you do not know of legal advocacy organizations or lawyers in your area, you may refer to Appendix I for a list of professional resources.

## H. Help in Using this Manual

For the sake of consistency and clarity, "parent" is used throughout this Manual. Unless specifically indicated otherwise, "Parent" means a parent, guardian, person acting as parent of a child, or a surrogate parent appointed in accordance with New York Education Law and Regulations.

Legal citations are given below the title of the relevant law. The legislative act which creates an educational entitlement may include several laws. Each law within the act will have a separate citation. The most frequently used citation references are the following:

Federal

| | |
|---|---|
| P.L. | Public Law |
| U.S.C. | United States Code |
| C.F.R. | Code of Federal Regulations |

State

| | |
|---|---|
| N.Y. Educ. Law | New York Education Law |
| N.Y.C.R.R. | Codes, Rules and Regulations of the State of New York |

Where individual cases are cited in the text, an explanation of the citation is provided. In general, a parent or advocate need not focus on a case citation, but rather on the concept or principle for which the case stands.

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**An effective education is the
most important tool
a society can give its children**

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# Preface

This manual is dedicated to the children and young people who are trying to get an education despite personal frustrations or academic failure. It is also dedicated to those adults in their lives who understand that poor behavior or academic failure is often a cry for help, a cry in the sometimes unsophisticated language of the young.

The manual is provided by Student Advocacy as a service to the community to extend our efforts to protect the legal rights of students. It is designed to provide the legal information parents and professionals need in order to become more effective educational advocates.

This is the third edition of Student Advocacy's Education Law Manual. It has been substantially revised, as well as updated, to help parents more readily use the information. The first edition was prepared by Karen Norlander, Esq. and the second by Joan Cooney, Esq.

Student Advocacy is a non-profit organization serving Westchester and Rockland Counties. Our services will also be available in Orange and Putnam Counties beginning in January 1994. Student Advocacy is funded through private contributions, foundations, the Westchester County Youth Bureau, the Rockland County Youth Bureau, the United Way of Westchester and Putnam Counties, the Interest on Lawyer Account Fund, and the Westchester Developmental Disabilities Service Office.

As with all projects of this scope, substantial assistance is required of persons who receive minimal credit. This manual might never have been completed without the help of Jennifer Brown, our tireless and reliable intern (herself a lawyer). Kay Frank, Education Director at Student Advocacy, and Miriam Elkin, a former teacher and long-time educational advocate at Student Advocacy, each gave substantial time in editing this manual. Their vast experience and expertise offered greater insights into the practice of educational advocacy than any research could provide. In addition, deep appreciation is given to the law firm of Rogers & Wells for generously offering their services to print the manual, and to James Benedict and his secretary, Regina Abramowitz, for facilitating the printing process.

# INTRODUCTION:

# GUIDELINES FOR ADVOCACY AND NEGOTIATION

## Introduction:

## Guidelines for Advocacy and Negotiation

This manual gives an overview of students' educational entitlements and provides guidance and suggestions to assist advocates and parents in advocating on behalf of their children. General knowledge of educational entitlements is a necessary and effective tool when parents or professionals are working to improve services for a child. Educational entitlements are provided and protected by comprehensive state and federal legislation and the judicial cases interpreting the laws. This manual is designed as a resource to provide you with general information about these laws.

This manual is not intended as a definitive legal resource, but rather as a guide for structuring a legally sound argument to ensure that every student's educational rights are honored. The common law system in the United States continuously responds to current social, political and economic issues through judicial interpretations (case law) and legislative changes. Therefore, it is essential that parents and advocates are able to recognize when a legal issue is too novel or too complex to handle without professional legal assistance.

Effective advocacy relies on the art of negotiation. While a basic knowledge of education law is important to advocacy, it is effective only if presented in a clear and organized manner to school personnel. Some of the material in this introduction may appear to be self-evident. However, particularly in advocating for your own child, it is often difficult to remain open and objective and to avoid allowing your emotions to override your best judgement. The remainder of this introduction presents guidance on bringing the art of negotiation to your advocacy efforts. It addresses the following fundamental points:

**A. Stay Informed**
**B. Don't Wait If You See a Potential Problem**
**C. Work From the Facts**
**D. Use an Advocacy Plan**
**E. Coordinate the Efforts of Parents and Advocates**
**F. Do's and Don'ts of Negotiation**
**G. When to Seek Professional Assistance**
**H. Help in Using this Manual**

## A. Stay Informed

### Know Your School

Before problems arise, begin to build a personal and organizational relationship with the school which can provide a positive framework for each party in the course of negotiations. Get to know teachers, administrators, and support staff: develop allies. Whenever possible, compliment teachers and administrators on what is going well. Critical comments usually will be received much better if they are balanced by praise.

### Know Your Child

Keep aware of your child's strengths and weaknesses. Acknowledge these to teachers and school staff. Show that you have a balanced perspective on your child. Be involved with your child's education:

- keep a written record of your child's education and progress;
- keep a written record of report cards, and mark the dates you should receive them;
- find out when standardized tests are scheduled, and prepare your child for them; and
- support your child's efforts as well as successes.

## B. Don't Wait If You See a Potential Problem

If you see a potential problem, don't wait! Trust your instincts and begin to investigate the problem immediately. You know your child better than anybody else does.

Educational problems are unlikely to fade away nor should you count on your child outgrowing them. Sometimes, school staff will excuse educational delays or problems by talking about different rates of child development. While children normally develop skills at different times, it never hurts to investigate a suspected problem right away.

If a problem does exist the earlier you begin to address it, the easier it will be to resolve. In particular, repeated school failure typically leads to poor self-esteem or to acting-out by the child. These problems only compound the underlying educational problems.

### C. Work From the Facts

Take time to investigate the objective facts before you intervene. Don't rely on just one person's account. Try to separate opinions from facts. And conclude your investigation with an analysis of the problem by drawing on all of the information you've collected.

As you investigate the facts, keep accurate notes. Persist in asking questions until the information becomes clear. Do not be put off by technical language or fancy tests. You have a right to have test scores and technical information explained to you fully. Most parents are unfamiliar with educational tests and educational theory so don't be embarrassed to ask for an explanation when it's needed.

When requesting information, listen carefully and be tactful. Try to ask questions with an open mind, and without placing blame on anyone. Note people's impressions and opinions, but push to get the facts also. Don't lose your temper. Try to identify the interests on all sides as you interview the parties involved.

#### Clarify Parents' Concerns

Parents should clarify their own concerns, focusing on what needs to be addressed or changed rather than on who is at fault. Advocates can help parents clarify their concerns by asking parents the following questions:

- How do they perceive the problem?
- What do they perceive as the child's needs?
- What are the child's strengths and weaknesses?
- What are the facts regarding the specific incident that is causing concern?

Advocates should also get a release signed by the parent allowing access to school records and evaluations, and permitting discussion of the incident with school officials and professionals who have evaluated the child.

#### Interview the Child

- How does the child feel about school?
- Does the child get along with teachers and peers?
- What subjects does the child like or dislike?
- What precipitating factors led to trouble?

Get the child's side of the story.

## Review All School Records

The child's main school records, called the cumulative file, are kept in the building where the child attends school. If the child is "educationally handicapped," there is a second set of records in the Committee on Special Education office. For further information on your right to review school records, see Chapter Three in this manual.

If you believe that the educational problem is related to a handicapping condition and the child has not been evaluated, request an evaluation by the Committee on Special Education immediately. (See Chapter Six in this manual.)

## Interview School Personnel

Contact relevant school personnel, which may include teachers, guidance counselors, social workers, the principal, the assistant principal, or the school psychologist.

Get the facts surrounding the precipitating event. If appropriate, interview any eye-witnesses. Confirm your understanding with the school—in writing—and request similar documentation from the school.

## Investigate Relevant School District Policies

Request a copy of the Student Handbook and all other information about the school district's policies regarding the general issue which you are addressing. Whenever possible, request written copies of the district's policies. It may also be useful to ask school personnel how these policies are carried out.

## Know the Child's Legal Rights

Use this manual to identify the legal rights related to the problem at hand. You can refer to information in the manual in letters to the school, show copies of relevant pages at meetings, or simply raise concerns based on the legal information.

If the legal information is not clear to you, seek clarification and legal advice before you attempt to use this information.

### Analyze the Problem

After you have gathered the information, go back through your notes. Organize it and think about it. Distinguish fact from opinion. Be clear about what issues are under dispute.

Separate the people from the problem. Look at the problem from all points of view.

## D. Use an Advocacy Plan

An advocacy plan is a general guideline for how to proceed in addressing the problem. It is not meant to be an inflexible map to follow. The following material gives guidance on formulating and using and advocacy plan.

### Keep Focused on the Problem

Focus on your child's needs and the services needed to improve his or her education. Demanding apologies or admission of inappropriate treatment is likely to bog down the process. A good apology won't help your child; services will help.

Stay focused on how to resolve the problem and move forward, rather than on what has occurred in the past. Practice this yourself and focus the discussion in this direction when you meet with school staff. Try to acknowledge others' perception of the problem: put yourself in their shoes. And give school staff a chance to voice their opinion. Then bring the focus back to resolution of the problem and common interests.

### Identify Common Interests

Try to avoid a win-lose situation. Identify alternative ways to address the problem rather than taking a locked position. Often there are several alternatives. Investigate these alternatives carefully noting eligibility guidelines of different programs, openings, and appropriateness for your child. If you are considering specific programs, visit the program.

When you are negotiating at a meeting, give the school a stake in the outcome. Be prepared to show how different alternatives meet the school's concerns or uphold the school's policies. Note similar solutions in other cases to gently remind the school of precedents already set within the school district.

Especially in difficult negotiations, be open to gradual change rather than a complete victory. If you get partial agreement to your proposed solution, you can suggest a trial period and leave the door open to return for further negotiation at a later date.

### Identify Procedures to be Followed

Be aware of school procedures, the chain of command within the school, and legal procedures. What are the "rules of the game" and the procedures and standards which must be followed?

As you identify possible solutions to the problem, review the procedures for obtaining that solution. Whenever possible, try to move up the chain of command within schools rather than simply jumping to the top. Going over someone's head generally creates antagonism and prevents you from developing a possible ally. For some problems, such as a long term suspension, the law requires immediate involvement by the superintendent. However, many problems can be successfully resolved by a teacher or the principal.

Confirm in writing your understanding of any agreements made with the school, and request similar documentation from the school. Be clear about when new services will start: request the actual dates be included in the written documentation. Follow up with your child to make sure the services begin and that they are actually helping your child.

## E. Parents and Advocates Need to Coordinate the Plan of Action

If an advocate is involved in the case, parents and advocates should work together closely to ensure a common understanding of their goals. In particular, they should:

- Review the facts from all perspectives;
- Assess whether any legal rights have been violated;
- Determine whether more evaluations or information are needed;
- Review the proposed course of action and find out if you share the same goals for the child—identify the client;
- Determine the appropriate level of intervention and necessary action;

- Document all contacts and confirm understandings in writing.

Advocates should make sure that they have established common goals with parents prior to any negotiations with the school. You should establish goals with your client that will:

- Facilitate communication between parent, student and school personnel;
- Offer positive, realistic alternatives;
- Move the client from the past to the present and the future;
- Confront unrealistic goals and objectives of the client; and
- Determine whether you are able to represent the parents' point of view before proceeding.

## F. DO'S AND DON'TS OF NEGOTIATION

**Prior to Negotiation:**

| Do |
|---|
| Deal from the strength which comes from preparation |
| Negotiate only with those in power, real or authorized delegates |
| Know the true needs of the other parties |
| Carefully consider the effect of meeting in public |

| Don't |
|---|
| Don't delay preparation |
| Don't underestimate the other side |
| Don't overestimate yourself, your team, the justification of your case or strategies |
| Don't talk loosely about plans or attitudes |

x

**During Negotiations:**

| Do |
|---|
| Be calm and cool |
| Be personable, use names, be respectful |
| Be reasonable |
| Be confident in yourself and in the process |
| Listen carefully |
| Keep a "poker face" |
| Bargain for accommodations, rather than the win or "wipe out" |
| Take command of the meeting without verbal domination |
| Keep the meeting on the issues at hand |
| Sell your ideas persistently |
| Phrase questions for a positive response |
| Study alternatives and new information |
| Caucus often, but don't keep the other side waiting too long |
| Bring up major issues |
| Avoid being intimidating |
| Respect confidentiality |
| Express appreciation of the time and effort of the other side |
| End on a positive note |

| Don't |
|---|
| Don't lose your temper |
| Don't interrupt |
| Don't waste people's time |
| Don't react too unfavorably to your own mistakes; don't be defensive, accusatory, or apologetic |
| Don't rush the other side |
| Don't compromise your objectives or philosophies |
| Don't list priorities for the other side |
| Don't be afraid to let an issue stay on the table |
| Don't oversell |
| Don't escalate demands or present surprises |
| Don't be pressured; if you have doubts, delay |
| Don't argue among yourselves, save it for the caucus |
| Don't wait to spill any bad news |
| Don't let your guard down |
| Don't keep worrying about the end result |
| Don't end on a negative note |

**NEVER** make a promise you cannot keep; **NEVER** lie; **NEVER** assume.

# CHAPTER ONE:

# EDUCATIONAL ENTITLEMENTS

# Chapter One:

# Educational Entitlements

As society becomes increasingly complex, the need for education for all children becomes ever more essential. Despite budget constraints and population shifts, no one disputes the basic entitlement to education.

The principle underlying all educational entitlements is the right of a "Free Appropriate Public Education" (often abbreviated, "FAPE"). This right is protected by the New York State Constitution and interpreted through New York State's Education Laws. Article XI, section 1 of the N.Y.S. Constitution establishes that the legislature must, "Provide for the maintenance and support of a system of free, common schools, wherein all the children of this state may be educated."

The protection of the right to a free appropriate public education under the New York State Constitution and Education Law is based on federal law principles. In a landmark decision the United States Supreme Court unanimously held that, "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity for an education." Brown v. Board of Education, 347 U.S. 483 (1954).

This chapter explains the basic issues which flow from the fundamental right to a free appropriate public education and is organized to answer the following questions:

| | | |
|---|---|---|
| **A.** | **Right to Education:** | Who has a right to education? |
| **B.** | **Compulsory Education:** | Who must be educated? |
| **C.** | **Drop Procedures:** | When may a student be dropped from school attendance? |
| **D.** | **Residency:** | Where must a child be educated? |
| **E.** | **Transfers of Students:** | Which school can the student attend? |

Subsequent chapters explore in greater detail the specific educational rights extended to individuals based on particular needs for protection.

### A. Right to Education

The right to an education extends to all children over five and under twenty-one years of age who have not yet received a high school diploma. N.Y. Education Law §3202 (1) (McKinney 1993). This right is universal and is not dependent on the ability or the likelihood of the child's successfully obtaining a high school diploma.

### B. Compulsory Education

> A minor shall be required to attend upon full time instruction from the first day that the appropriate public schools are in session in September of the school year in which the minor becomes six years of age (for children born prior to or on December 1; children who turn six after December 1 may enter the following September); and, . . . shall be required to remain in attendance until the last day of session in the school year in which the minor becomes sixteen years of age. N.Y. Educ. Law §3205(1)(c) (McKinney 1993).

> In each city of the state and in union free school districts having a population of more than forty-five hundred inhabitants and employing a superintendent of schools, the board of education shall have power to require minors from sixteen to seventeen years of age who are not employed to attend upon full time instruction until the last day of session in the school year in which the students become seventeen years of age. N.Y. Educ. Law §3205(3) (McKinney 1993) (emphasis added).

A pupil may choose to drop out of school upon reaching the age of 17; however, the school must continue to provide an education to anyone over the age of 17 who has not received a high school diploma and who wants to remain in school. A pupil who drops out of school before receiving a high school diploma has the right to return to high school until the age of 21. N.Y. Educ. Law §3202(1) and (1-a) (McKinney 1993). Even if a student has so few credits that he will be unable to graduate by age 21, he may still return to high school until the age of 21, unless the student has been expelled following due process procedures (See Chapter Four).

A student is entitled to remain in school through the end of the school year in which that students turns 21, regardless of whether he or she will be able to graduate.

## C. Dropping a Student Over the Age of 16 from School Attendance

No student may be dropped from attendance until the last day of the school year in which he turns sixteen. For students over the age of sixteen, the law requires a school to follow certain procedures before dropping a student from attendance. N.Y. Educ. Law §3202(1-a). Some districts have elected to raise the compulsory age to 17. N.Y. Educ. Law §3205(3). Check your district's policy on compulsory school age. If the district has raised the compulsory age to 17, then students must remain in school through the end of the year in which they turn 17.

Before a school may drop a student from attendance, the following events must have occurred:

1. The student must be absent 20 consecutive days
2. The principal or superintendent of schools must notify (in writing) the person in parental relationship and the student that an informal conference has been scheduled.
3. At the informal conference, the principal or superintendent must determine—
   - the reason for the student's absences;
   - whether changes in the student's program would encourage a return to school.

If the student chooses to drop out despite the school's efforts, the student and the person in parental relationship must be informed orally and in writing of the student's right to re-enter school in the district of residence until the age of 21.

## D. Residency

> "A person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such a person resides without the payment of tuition." N.Y. Educ. Law §3202(1).

The determination of residency is based on both fact and law. NYS Education Law presumes that the residence of the parent is the residence of the child, though this presumption can be challenged. **"The court's appointment of a legal guardian is unnecessary to establish residence in a district other than that of the residence of the student's parents."** Matter of Staulcup, 20 Educ. Dept Rep. 11, 13 (1980); Matter of Tiger and Talasko, 16 Educ. Dept Rep. 178 (1977); Simms et al v. Roosevelt UFSD et al, 100 M2d 827, 420 N.Y.S. 2d 96 (Sup. Ct. Nassau Co. 1979); Matter of Takeall, 23 Educ. Dept Rep. 475 (1984).

The NYS Commissioner of Education has held that the following facts are relevant to a determination of residency where a pupil does not live with a parent:

- whether this is the pupil's actual and only residence;
- whether the residence is intended to be permanent;
- whether the natural parents have relinquished custody and control to the person with whom the child is living;
- whether the adults with whom the child resides have assumed responsibility for the care and supervision normally provided by the parents;
- whether the natural parents provide financial support to the child; and
- whether the decision to transfer custody was for the purpose of taking advantage of the school district's program.

In addition, §100.2(y) of the Commissioner's Regulations requires that when the Board of Education and its designee determine that a child is not entitled to attend its schools, the Board of Education or its designees shall, within two days, provide written notice of its determination to the child's parent, to the person in parental relation to the child, or to the child, as appropriate. See Appeal of Betty McMullan and Diane McMullan 29 Educ. Dept Rep. 310 (1990).

## Exceptions to the General Rules of Residency

**Emancipated Minors.** Emancipated Minors have the right to attend school in the district where they reside. Although some states have adopted emancipation statutes, the principle of emancipation in New York is governed by common law. A self-supporting minor over the age of sixteen, living separate and apart from parents (not in foster care) who has completed compulsory education is considered emancipated.[1] In New York State, no court proceeding exists in which a person can be formally adjudicated an emancipated minor. Appeal of Debrah V., 29 Educ. Dept Rep. 176 (1990).

A student who is considered an emancipated minor is entitled to establish his or her own residence. As a resident, the emancipated minor has the right to attend school in the district without the payment of tuition. The only relevant issues in determining residency are whether the student is emancipated and where the emancipated minor actually lives.

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[1] See Social Services Regulation at 18 NYCRR §349.5. "Self-supporting" implies a minor who is not living under a parent's custody or control and who is not receiving any financial support from them. A minor who is receiving social security or public assistance may be considered self-supporting.

To determine if the student is emancipated, consider whether the student:

- is over the age of sixteen;
- lives separate and apart from parents;
- is self-supporting;
- is not under the custody or control of either parent;
- is not in foster care.[2]

**Homeless Youth.** Despite their lack of permanent housing, homeless children have the right to attend school. The Commissioner's Regulations allow the parent, the person in parental relation (or, if neither is available, the child) to designate as the school district of attendance either the school district of origin, the school district of current location, or (if available) a school district which is part of a regional placement plan.[3] The designation must be in writing, on a form approved by the State Education Department and available through the local Department of Social Services.

## E. Transfers of Students

A student cannot be transferred from one school to another without parental consent. N.Y. Educ. Law §3214.5 (McKinney 1993). Before any transfer, the principal must inform the student and the person in parental relationship **in writing** that a transfer is being considered. The letter must:

- schedule an informal conference with the principal; and
- advise the parent and student of the right to bring an attorney or any other person.

A non-requested or involuntary transfer must benefit the student and provide an adequate and appropriate education.

### Parental Rights

A parent can withhold consent for a transfer to another school. When this occurs, the superintendent determines if the transfer will occur. The principal must notify the superintendent, with a copy to the parent, of the proposed transfer in writing describing:

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[2] Matter of Takeall, 23 Educ. Dept Rep. 475 (1984).

[3] 8 N.Y.C.R.R. §100.2(x).

- the behavior and/or academic problems that prompted the consideration of a transfer; and
- other alternatives and actions previously taken to resolve the problem.

After making a determination, the superintendent must notify the pupil and the person in parental relationship of the decision concerning the transfer; their right to a superintendent's hearing; and sources of free legal assistance and community agencies which may be of assistance to them.

If a parent still objects to the transfer, the parent has **ten days** to request a hearing. The pupil may not be transferred until the ten days have elapsed.

If the parent requests a hearing before the superintendent, the proposed transfer shall not take effect until a formal decision is rendered. (Parental consent to a transfer shall not constitute a waiver of the right to a hearing.)

# CHAPTER TWO:

# MANDATORY TESTING

# AND

# GRADUATION REQUIREMENTS

## Chapter Two:

## Mandatory Testing and Graduation Requirements

Pursuant to the basic law guaranteeing the right to a public education, there are numerous regulations concerning educational programs which will ensure a quality education and uphold the value of a high school diploma. These include, but are not limited to, instructional time, required credentials for teachers, mandatory testing and diploma requirements.

Although every child is entitled to an education until the age of 21 or until receiving a high school diploma, there are differences among the educational programs offered and the degrees conferred upon program completion. Each of the programs leads to a different diploma and consists of different curricula and tests. Students, their advocates, and parents must be aware that the diplomas awarded by each program are not valued equally by employers or institutions of higher education.

In general, all public schools in New York State are required to provide specific program components for every student according to age level, and to administer standard required tests at the end of specified grade levels. The purpose of the testing is two-fold. First, testing is intended to identify students in need of remedial instruction in order to enable them to score above the expected normative level ("Statewide Reference Point" or "SRP"). Second, test results are used by the State Education Department to assess the quality of the programs at each school in every district in the State.

This chapter is organized as follows:

**A. Summary of Statewide Tests**
**B. Diagnostic Screening and Tests**
**C. Alternative Educational Programs**
**D. High School and Regents Diplomas**
**E. High School Equivalency Diploma**
**F. High School Individualized Education Program Diploma**

## A. Summary of Statewide Tests[4]

| **Grade** | **Test** | **Area(s)** |
|---|---|---|
| 3 | Pupil Evaluation Program (PEP) | Math, Reading |
| 5 | Pupil Evaluation Program (PEP) | Writing |
| 6 | Pupil Evaluation Program (PEP) | Math, Reading |
| By the end of | | |
| 6 | Pupil Evaluation Program (PEP) | Science, Social Studies |
| 8-9 | Preliminary Competency Tests (PCT) | Reading, Writing |
| 8 | Program Evaluation Test (PET) | Social Studies |
| 8 | Proficiency Examination | Second Language |
| 9 | Regents Competency Tests (RCT) | Math |
| 9 | Regents Competency Tests (RCT) | Science |
| 9-12 | Regents Examinations* | Various Subject Areas |
| 9-12 | Proficiency Examination | Occupational Education |
| 10 | Regents Competency Tests (RCT) | Global Studies |
| 11 | Regents Competency Tests (RCT) | American History & Government |
| 11-12 | Regents Competency Tests (RCT)* | Reading, Writing |

*Requirements for Regents Exams and RCT's are waived for students who achieve a high score on SAT or ACT. This waiver changes frequently; check with the New York State Education Department for information on the current waiver.

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[4] Taken from A Parent's Guide To Special Education: Your Child's Right To An Education in NY State, State Education Department, Albany, NY 12234, p.5

### Alternative Testing Procedures

Alternative testing techniques such as lengthened test times or alternate room arrangements must be provided for students with disabilities where necessary to allow them to demonstrate their skills or knowledge. Alternative testing procedures must be included on a student's IEP, where appropriate. See 8 N.Y.C.R.R. §100.2(g).

## B. Diagnostic Screening and Tests

Diagnostic tests are mandated to be performed for three groups of students: (1) new entrants into the system; (2) pupils scoring below level two on either the third grade reading or math statewide exam (or the equivalent of the Regents preliminary competency test (RPT); and (3) children who fail or underachieve. The third group of students includes pupils not enrolled in a special class who have continuously failed two or more subjects during a school year, and underachieving students who (based on the judgment of their teachers) have not achieved for a year in accordance with their capabilities. The tests include a health examination by a duly licensed physician; and a determination of receptive and expressive language development, articulation skill, and cognitive development.

In addition, new entrants must provide a certificate of immunizations.

| Student Group | When Tests Are Administered |
|---|---|
| New Entrants | Prior to school year, if possible, but not later than December 1 of the year of entry; or within 15 days of transfer from out of state. |
| Students scoring below statewide reference point | Within 30 days of the availability of scores. |
| Students who fail or underachieve | Immediately after the problem is identified. |

After the tests have been administered, students have the right to obtain the test reports, and to seek appropriate review and determination of any action to be taken based on the test results. In particular, students' rights include:

**For new entrants into the state and pupils scoring below the expected norm**—After testing, a written report must be provided including a description of diagnostic screening devices, the pupil's performance on these devices and, if required, the appropriate referral.

If the report reveals that the student may have a handicapping condition, the case must be referred to the Committee on Special Education within 15 days of completion of the screening.

If the report reveals that the student may be gifted, the superintendent must be so notified within 15 days of screening completion.

**For students who fail or underachieve**—A student who is failing or who, in the judgement of a teacher has not performed in accord with capacity, has the right to suitable examinations to ascertain the physical, mental and social causes of the failure or underachievement. These may include psychological testing, social history or tests to identify a possible learning disability.

Once appropriate testing is completed, the results of the examinations must be provided to parents and reviewed by school authorities to determine the best procedures to alleviate or remove the cause of failure or underachievement for the student.

## C. Alternative Education Programs

Nationally and statewide, much attention in recent years has been given to establishing programs which are better directed to the needs of today's students. The term "alternative education" describes any school or program that is deliberately differentiated from the traditional educational model in order to accommodate the needs and interests of students who are experiencing difficulty in the traditional classroom or who are seeking a more progressive academic approach.

"Alternative education" is used broadly to describe non-traditional programs at all levels, kindergarten through grade 12. Each school district has different programs of alternative education. Parents and advocates should request information regarding such programs directly from the school district involved. The information should specify what alternative programs are available and eligibility requirements for each program. Alternative programs range from fully separate schools, to annexes to traditional schools, to specific programs within schools.

Alternative programs may be designed to serve a variety of student needs and interests. These include: academic and parenting programs for teenage parents; enrichment; career awareness; opportunity to earn a high school equivalency diploma; and experiential learning environments. In all cases, alternative programs are more substantive than mere counseling or short-term remediation.

If your child or a child you represent would benefit from an alternative educational program or is experiencing trouble in the traditional classroom, you are advised to contact the board of education in your district directly. Some of these programs, including Chapter I services, are covered in Chapter Five of this manual.

### D. High School and Regents Diplomas

High school students, their parents, and advocates should know that each school district must offer students the opportunity to take Regents courses in grades nine through twelve and (where appropriate) grade eight. If the requirements are satisfactorily completed, the district must award the Regents diploma. 8 NYCRR §100.2(e). However, the distinction between the value of a Regents' diploma and a local diploma has narrowed in recent years.

| Course | Diploma Units[5] | |
|---|---|---|
| | Regents | Local |
| English | 4 | 4 |
| Social Studies (incl. 1yr American history) | 4 | 4 |
| Mathematics | 2 | 2 |
| Science | 2 | 2 |
| Health | ½ | ½ |
| Arts or Music | 1 | 1 |
| Second Language | 3 | 0 |
| Sequence & Electives[6] | 2 | 3 |
| Total Credits Required (plus phys. ed.) | 18½ | 16½ |

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[5] Diploma Requirements are set forth in 8 NYCRR §100.5, and were changed in 1985. The revisions are applicable to students first entering grade nine after 1985.

[6] Sequence and elective requirements vary depending on a number of factors and each student is advised to consult a school guidance counselor to clarify their individual requirements.

## E. High School Equivalency Diploma

There are a number of ways in which a person may be awarded a High School Equivalency Diploma. Each process has a different set of requirements leading to the diploma. Among the factors to consider are age, other post-secondary credits earned, residence in a correctional institution or hospital in New York State, or participation in a high school equivalency program in the home district or at a BOCES campus.

The High School Equivalency Program is a preparatory course that is offered for eligible students, generally those over compulsory school age but under 19, to enable them to successfully complete the General Education Diploma (GED) tests required to obtain a high school equivalency diploma. Young adults who are aged 19 or older are eligible to take the GED examination, provided they have lived in New York State for at least one month prior to taking the exam. Qualifications for 17 and 18 year olds are listed in the chart on page 15.

In addition, persons who are required to provide GED scores for enlistment in the Armed Forces of the United States and students for whom successful completion of the GED examination is a prerequisite for entry into a post-secondary program, may qualify to take the exam. In the case of a student entering a post-secondary program, the diploma will not actually be awarded until after the person becomes fully qualified by completing the designated courses.

It is critical that students, their parents and advocates be advised that a qualified student who has received a high school equivalency diploma, as opposed to a regular or Regents diploma, remains entitled to attend the public school in his or her district of residence, without the payment of tuition, until the age of 21 or until receiving the local or Regents diploma.[7]

The GED diploma is not of equal value to a Regents or local diploma. In some cases, such as entry into the Armed Forces and some post-secondary programs, a higher entrance standard may be applied to applicants with a GED diploma.

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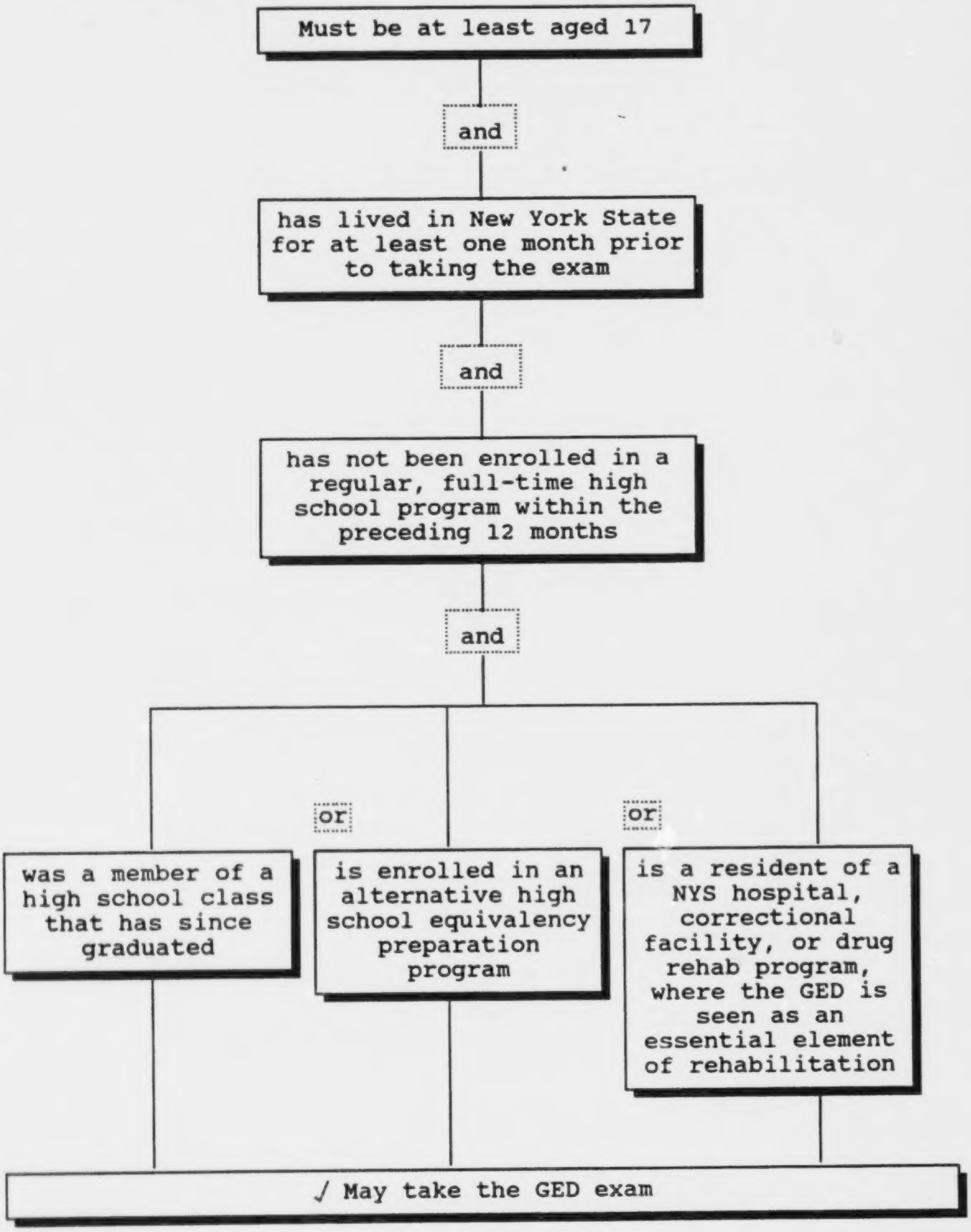
[7] See A Parent's Guide to Special Education for Children Ages 5 - 21, New York State Education Department, July 1992, p. 28.

## Qualifications to Take the GED Exam Prior to the 19th Birthday
8 NYCRR §100.7(1)


Must be at least aged 17
and
has lived in New York State for at least one month prior to taking the exam
and
has not been enrolled in a regular, full-time high school program within the preceding 12 months
and
or
or
was a member of a high school class that has since graduated
is enrolled in an alternative high school equivalency preparation program
is a resident of a NYS hospital, correctional facility, or drug rehab program, where the GED is seen as an essential element of rehabilitation
√ May take the GED exam

The GED Tests cover five areas: Writing Skills, Social Studies, Science, Interpreting Literature and the Arts, and Mathematics. In order be awarded the High School Equivalency Diploma, qualified candidates must satisfy one of the following three requirements:

1. take the general comprehensive examination in English and achieve a satisfactory standing. In general, minimum acceptable scores are 40 on each test or an average of 50 on all five tests; or

2. take the general comprehensive examination in a language other than English, as well as an English language proficiency examination, and achieve a standing designated as satisfactory on each test. In the event that a student does not pass the English language proficiency exam, but achieves a satisfactory standing on the general comprehensive exam, he or she will be awarded a high school equivalency diploma bearing an inscription indicating the language in which the exam was taken, and may exchange this diploma at such time as the English language proficiency examination is satisfactorily completed; or

3. provide satisfactory evidence of successful completion of 24 credits or the equivalent as a recognized candidate for a college-level degree or certificate at an approved institution.

Students who are at least 16 years of age (or older, if the district of residence has chosen to raise the compulsory age[8]) and below 18, may enroll in an alternative high school equivalency program. A student who chooses to pursue this program may transfer from the regular high school or enroll after leaving high school. The school district or a BOCES program must submit the application to the alternative program on behalf of the student. The school district or BOCES must then assume the responsibility for assuring that the following program standards are met:

- 12 hours minimum instructional time per week;
- subjects or activities of the program are designed to prepare students for the high school equivalency examination;
- instructional program based on student's tested reading level; and
- written parent/student permission.

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[8] See NY Educ. Law §3205(3).

For students who are at least 18, but under 21 years of age, who have not received a high school or equivalency diploma in specially designed employment preparation programs, the requirements for the program are detailed in 8 NYCRR §100.7(i)(3).

For more information on the GED examinations contact:

Assistant Supervisor, Division of Educational Testing
State Education Department
Albany, NY 12234
(518) 474-6169

### F. High School Individualized Education Program Diploma

Students with a handicapping condition may receive an individualized education program (IEP) diploma in accordance with the requirements outlined in Chapter Six (See page XX). Though referred to as a "diploma," an IEP diploma is not the equivalent of a local or Regents diploma. However, students who receive an IEP diploma retain the right to continue their education until receipt of a high school or Regents diploma, or until age 21, whichever is earlier.

The right to return for a local or Regents diploma must be specifically stated on the IEP diploma itself. This right to continued education is not contingent on the likelihood that a student will actually complete the requirements for these other diplomas.

To qualify for the IEP diploma, a student must:

- complete 12 years of school, not including kindergarten, and achieve the IEP goals during the twelfth year; or
- attend school until age 21 and meet the IEP goals in that year.

Some school districts have adopted policies allowing a student or parent to request the IEP diploma prior to age 21. Check with your district.

# CHAPTER THREE:
# ACCESS TO RECORDS

## Chapter Three:

## Access to Records

A student's educational records are the essential resource for resolving any educational dispute which may arise. Therefore, it is critical that a parent's right to access school records be carefully safeguarded. A parent's right to obtain access to their child's educational records is contained in what is often referred to as the "Buckley Amendment" or "Sunshine Laws". (The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232; 45 C.F.R. §99 et seq. [FERPA; Buckley Amendment].)

This chapter is organized to answer the following questions:

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A. **Educational Records:** What does this include?
B. **Parent and Student Rights to Student Records:** What control do parents have regarding their child's school records?
C. **Disclosure:** Who has access to student records?

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## A. Educational Records

Educational records are records directly related to a student, which are maintained by an educational agency or a party acting for the institution. The term includes:

- THE CUMULATIVE FILE—report cards, disciplinary actions, progress reports, test scores, attendance records, and any other relevant information; and
- THE SPECIAL EDUCATION FILE—IEPs, evaluations, CSE minutes.

The following items are not included in "educational records:"

- Records of instructional, supervisory, and administrative personnel which are kept solely in the possession of the maker and are not accessible or revealed to anyone else, except a substitute teacher.
- Records of a law enforcement unit of an educational agency or institution which are kept apart from school records, solely for law enforcement purposes and not disclosed to anyone but law enforcement personnel.
- Records relating to an individual employed by a school made in the normal course of business and related exclusively to that person in an employee capacity.
- Records of a physician, psychiatrist, or other professional or paraprofessional relating to a student which were created, maintained or used only in connection with the provision of treatment to the student and not disclosed to anyone other than those providing the treatment.

## B. Parent and Student Rights to Student Records

Parents, students 18 or over, or students who are emancipated minors have the right to:

INSPECT AND REVIEW the child's cumulative education records. (If a child is determined to be handicapped, a separate CSE file is maintained in the CSE office).

OBTAIN COPIES of any records or notes found in the school record. (The school may charge a reasonable amount for copies).

REQUEST THAT INFORMATION BE REMOVED from the education record if it is inaccurate, misleading or an invasion of privacy.

BE INFORMED OF THE RIGHT TO A HEARING if the school refuses to amend the education records. The hearing must be held within a reasonable period after receiving the request. The parent must be given notice of the date, place and time reasonably in advance of the hearing.

The hearing may be conducted by any party who does not have a direct interest in the outcome of the hearing, including an official of the educational agency or institution. The parent shall be given a full and fair opportunity to present evidence relevant to the issues and may be represented by anyone including an attorney. The hearing officer shall make a decision in writing within a reasonable period of time after the hearing.

PLACE A STATEMENT IN THE STUDENT'S EDUCATIONAL RECORD commenting on the information in the record and/or setting forth reasons for disagreeing with the decision of the school if the hearing officer rules against the parent. Such an explanation placed in the educational record of the student becomes part of the educational file and if the information is disclosed to a third party, the explanation must be disclosed.

APPEAL AN ADVERSE DECISION to the Department of Education on a special State Education Department complaint form.

### C. Disclosure

In general, disclosure of school records to third parties is permitted only with the written consent of the parent. The exceptions to the rule are that records **may** be released without the written consent of parents:

- to school officials with a legitimate educational interest;
- to officials of another school where the student seeks enrollment if the policy states that they forward records on request to a school;
- in health and safety emergencies; or
- for research and other purposes listed in the statute. See 20 U.S.C. §1232; 45 C.F.R. §99.

# CHAPTER FOUR:

# SCHOOL DISCIPLINE

## Chapter Four:

## School Discipline

Disciplinary issues in the schools have become an increasing concern among educators and parents. As in the home environment, schools are constantly challenged to provide fair, appropriate discipline to children in the schools and on school transportation. The goal of disciplinary policies and procedures must be to encourage positive developmental change which will avoid disruptive behavior and enable the student to learn more effectively.

Schools must seek to balance individual children's needs and rights while ensuring a safe and positive educational environment for all students. To be effective, disciplinary policies must be conveyed clearly and applied consistently—yet remain sufficiently flexible to handle every case on an individual basis by designing strategies that benefit the particular student. Discipline must account for such factors as age and ability. Ultimately, the entire educational environment should be designed to promote policies that reduce the incidence of disciplinary violations.

As most parents are aware, one of the most effective ways to avoid disciplinary issues is to establish, maintain, and communicate clear and reasonable policies of conduct, to explain them adequately to ensure a child's thorough understanding and to apply the policies consistently. If a child does not understand the reason for a policy or if it is arbitrarily administered, it would be unreasonable to expect that he or she will adhere to it.

This chapter is organized with these principles in mind. Sections A through C outline the requirements for standard policies and procedures for disciplinary issues. Sections D and E cover suspension procedures applicable to all students and refers the reader to Chapter Six for disciplinary matters involving students with handicapping conditions.

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**A. Required Disciplinary Policies and Procedures**
**B. Policies Regarding Corporal Punishment**
**C. Guidelines for Communicating Rules to Students**
**D. Procedures in Disciplinary Exclusions of Children in Regular Education from New York Schools (Suspensions)**
**E. Alternative Forms of Discipline**

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## A. Required Disciplinary Policies and Procedures

A written policy on school conduct and discipline must be developed locally in consultation with teachers, administrators, school service professionals, students and parents. The Board of Education is required to adopt and review the policy on an annual basis and to amend it whenever appropriate. The policy must be filed in each school building and must be available for review. It should include:

- THE STUDENT HANDBOOK, publicized and explained annually to all students, setting forth—
  - A BILL OF RIGHTS AND RESPONSIBILITIES, focusing on positive student behavior; and
  - A DISCIPLINE CODE, provided annually to all parents, with prohibited student conduct and the full range of penalties which may be imposed for any violation.
- Strategies and procedures for maintaining and enforcing order on school property.
- Building procedures for involving service personnel, administrators, teachers, parents and students in early identification and resolution of discipline problems.
- Procedures for determining when the conduct of a handicapped student—or conduct which leads school personnel to suspect a handicap in a student—constitutes a reason for referral to the CSE.
- Alternative educational programs for appropriately meeting individual student needs.
- Disciplinary measures for violation of the discipline code.
- Guidelines and programs for in-service training for all staff members to ensure effective implementation of the school policy on conduct and discipline.

## B. Policies Regarding Corporal Punishment

The use of physical force for the purpose of punishment is prohibited in public schools by state regulation. However, reasonable physical force is permitted where there is no other alternative:

- to protect oneself from physical injury;
- to protect another person from physical injury;
- to protect school property or the property of others; or
- to restrain or remove a pupil who is interfering with a request to stop the disruptive behavior. (8 NYCRR §100.2(n)(3))

## C. Guidelines for Communicating Rules to Students

It is unreasonable to expect any student to read, absorb and remember the details of the Student Handbook. In addition to reading the handbook themselves and discussing it with their children, parents should request the following of schools:

- REQUIRED MEETINGS, at which disciplinary policies and penalties are explained, with opportunity for students to discuss or question policies which may be unclear;
- DISCUSSION of student rights and responsibilities in every classroom;
- INCORPORATION of strategies for alternative dispute resolution into the curriculum for every grade level;
- REINFORCEMENT of positive behavior and behavioral improvement;
- COURTESY AND RESPECT FOR EVERY STUDENT by all school personnel.

## D. Procedures in Disciplinary Exclusions of Children in Regular Education from New York Schools (Suspensions)

Prior to reviewing suspension procedures, parents and advocates should clarify the issues in a particular case by answering the following questions:

- Is it a short term (5 days or less) or long term suspension (more than 5 days)?
- Is the pupil under the compulsory school age (16 years old)?
- Is the student designated handicapped by the CSE or entitled to the protection of Section 504 of the Rehabilitation Act of 1973? (See Chapter 7 of this manual.)
- Do you suspect that the student has a handicapping condition?
- Has adequate notice been provided in writing?
- Does the alleged misconduct involve potential criminal or civil liability?
- What does the child want?

What To Do In Cases Involving Suspension

1. Get the facts—listen and ask questions.
2. Review the school's Student Handbook.
3. Know your legal rights and determine what is at stake.
4. Review the child's school records. Is this the first incident?
5. Call the principal and set up an informal conference. If the incident involves an alleged criminal act, you

should either call Student Advocacy, Inc. or an attorney before speaking with any school official about the incident.

6. If your child is under the compulsory school age, request that the district immediately arrange for homebound instruction.
7. If the school is scheduling a long term suspension hearing, seek professional advice at once.[6] Do not proceed to a long term suspension hearing without professional advice. Seeking advice after a decision is rendered is generally too late!

> If the school is scheduling a long term suspension hearing,
> **SEEK PROFESSIONAL ADVICE AT ONCE!**

## Grounds for Suspension

"A pupil who is insubordinate or disorderly or whose conduct otherwise endangers the safety, morals, health or welfare of others" may be suspended from school. N.Y. Educ. Law §3214(3-9.1) (McKinney 1981).

New York State Education Law §3214 establishes procedures governing the suspension of any pupil from public school. The procedures which must be followed are determined by the length of the suspension imposed.

## Short Term Suspensions (Five Days or Less)

A principal may initiate a suspension of five days or less, if the Board of Education adopts bylaws delegating such authority to principals. Otherwise, only the superintendent of schools may suspend a child from school.[7]

A parent must be notified of a suspension in writing within 24 hours of the incident, including a specific statement of the charges.

In a short term suspension, the parent and child have the opportunity for an informal conference with the principal in which the parent may ask questions of complaining witnesses.[8]

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[6] See the Resource list in Appendix X.

[7] N.Y. Educ. Law §3214(3)(b) (McKinney 1981).

Long Term Suspensions (in Excess of Five Days)[9]

A child suspended form school for more than five days must be given the opportunity for a fair hearing before the superintendent of schools, or a designated hearing officer.

A parent has a right to receive prior written notice of the hearing including the specific charges against the pupil, and to request an adjournment if the parent is unable to be present at the scheduled time or date.

At a fair hearing, pupils have the right to be represented by counsel, with the right to question adverse witnesses and to present witnesses and other evidence on their behalf. A record of the hearing must be maintained.

Pupils have the right to appeal a suspension to the Board of Education (BOE). If the BOE upholds the decision, a further appeal may be taken to the Commissioner of Education within 30 days of a BOE review. N.Y. Educ. Law §310 (McKinney 1988). This is known as a "Section 310 Appeal." Although parents may file appeals themselves, it is advisable to seek professional guidance.

What Is "Due Process"?

"Due process" is a broadly-used legal term based on the fundamental rights provided to all citizens under the Fourteenth Amendment of the U.S. Constitution. The term encompasses provisions in state and federal laws intended to safeguard the rights contained in the applicable law. The key due process provisions contained in New York State Education Law and Regulations include:

The right to be INFORMED of decisions affecting oneself or one's children through written notice;

The right to be INVOLVED in decisions affecting oneself or one's children by providing or reconsidering written consent to such decisions;

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[8] N.Y. Educ. Law §3214(3)(d) (McKinney 1981).

[9] N.Y. Educ. Law §3214(3)(c) (McKinney 1981).

The right to be HEARD when there is a disagreement regarding decisions or actions to be taken;

The right to IMPARTIAL RESOLUTION of disagreements regarding decisions or actions to be taken;

The right to APPEAL the decision of such impartial resolution of a disagreement to a higher authority.

In the context of public education of students in New York State, due process procedures establish the framework for resolution of disputes between students, their parents, and local school districts or other educational agencies.

In the educational setting, there is common agreement that every effort should be made to resolve disputes through informal channels and that formal due process procedures should be used as a last resort.

## Due Process Rights

The due process rights encompassed in New York State education law and regulations covering suspension procedures differ depending on the length of the suspension. The chart on the following page sets forth the principal rights of students and parents in short term and long term suspensions, respectively.

## Hearing Procedures

A suspension hearing involves two separate issues:

1. ADJUDICATION—Fact finding to determine whether the pupil is guilty of the charges; and

2. DISPOSITION—Only after a determination of guilt, may the hearing officer consider a student's prior disciplinary and academic file in making a recommendation to the superintendent regarding the punishment. A pupil's anecdotal record may only be introduced after a determination of guilt, and only if the parent had been given notice and an opportunity to review and comment on its contents.

**DUE PROCESS RIGHTS**

| Short Term Suspension[10] | Long Term Suspension | Appeals[11] |
|---|---|---|
| Written notice of specific charges | Written notice of specific charges | |
| Opportunity for informal conference with principal | Fair hearing before superintendent or hearing officer within 5 days of suspension | |
| Opportunity to tell student's side of story | Representation by counsel | |
| Opportunity to question complaining witnesses | Opportunity to question and present witnesses | |
| | Opportunity to cross examine school's witnesses | |
| | Record of the hearing | |
| | Written findings of fact and recommendations about discipline from hearing officer | |
| | Written decision from superintendent of schools | |
| | | Opportunity to appeal adverse decision to Board of Education within 30 days of superintendent's decision |
| | | Opportunity to appeal to Commissioner of Education within 30 days of Board of Education review |

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[10] The principal may initiate a short term suspension if delegated by the Board of Education (BOE).

[11] Parents and advocates are advised to seek professional assistance prior to initiating an appeal.

## Guidelines for Penalties in Suspension Hearings

APPROPRIATE TO OFFENSE. Title 8 NYCRR §100.2 (1)(1)(vi) requires that "disciplinary measures be appropriate to the seriousness of the offense and where applicable, to the previous disciplinary record of the student."

AUTOMATIC SUSPENSIONS. Any disciplinary rule which requires automatic suspension for certain behavior without regard for the circumstances violates this regulation.

ABSENCE DURING SUSPENSION PERIOD. A student under compulsory school age may not be marked absent during a suspension unless offered alternative education which they failed to attend. (See Matter of Nuttal 30 Educ. Dept Rep. 351 (1991).)

TRUANCY. A student may not be suspended, expelled or dropped from school attendance for truancy (King v. Farmer, 102 M2d 610, 424 NYS2d 86 (Sup. Ct. West. Co. 1979)). A truant may be referred to the Family Court as a Person in Need of Supervision (PINS).

ATTENDANCE. A Board of Education may adopt an attendance policy establishing minimum requirements to receive academic credit. The policy may not be to punish a student for excessive absences but must be related to academic reasons (i.e. class participation). The policy must apply equally to excused and unexcused absences. (See Matter of McClurkin, 28 Educ. Dept. Rep. 136 (1988), Matter of Ackert, 30 Educ. Dept. Rep. 31 (1990).

CONDUCT OFF SCHOOL GROUNDS. A student may not be suspended for conduct off school grounds unless:

- it involves behavior which is related to school; and
- a superintendent's hearing is held.

## Alternative Instruction During Suspension

When a pupil under the compulsory school age is suspended, the school must take immediate steps to provide alternative instruction until the pupil returns to school. Alternative education must:

- enable the student to keep up with school work;
- provide a minimum of five hours a week homebound instruction for elementary school students and ten hours a week for secondary school students; and

- provide homebound instruction in a public place, in the pupil's home with adult supervision, or in the school.

## E. Alternative Forms of Discipline

There are a number of alternatives to suspensions available to schools in disciplining students. In general, when these alternatives are imposed, students and their parents are entitled to due process rights similar to those in short term suspensions. At a minimum, this includes notice and the opportunity to discuss the matter with the school personnel authorized to invoke the discipline. No punishment which is arbitrary, capricious or unreasonable may be imposed.

### Bus Suspensions

A student may be suspended from transportation after an opportunity to express his or her version of the alleged incident involved. However, in the event that a bus suspension results in an exclusion from school due to the distance between home and school, a student under compulsory school age must be provided with an alternative education.[12]

### Academic Penalties

A school district may only impose academic penalties, such as lowering grades or denying credit, for unsatisfactory academic performance and not as a form of discipline for nonattendance or improper conduct.[13]

### Exclusion from Participation in Extracurricular Activities

A student may be suspended from extracurricular activities when appropriate. However, as in all disciplinary procedures, the sanctions must be reasonable given the circumstances, and a student and parent must be given an opportunity to present their version of the incident.

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[12] See Matter of Stewart, 21 Educ. Dept. Rep. 654 (1982).

[13] See Matter of Shamon, 22 Educ. Dept. Rep. 428 (1983); Matter of Moller, 21 Educ. Dept. Rep. 188 (1980).

## In-School Discipline

Schools should be encouraged to use permissible forms of in-school disciplinary methods, such as study-carrels, detention, time-outs and restrictions of privileges, as alternatives to suspension.  However, where the penalty effectively denies the student any access to education, for example, sitting idly in an administrative office, such discipline may be considered a suspension triggering full due process entitlements.

# CHAPTER FIVE:

# SPECIAL INSTRUCTIONAL SERVICES

# Chapter Five:

## Special Instructional Services

Students with special needs, including gifted students, can obtain some services without entering the Special Education system. This chapter outlines the primary services which may be offered, to whom they may be offered, and how they may be accessed.

In contrast to Special Education—which must be provided for every eligible student—none of these programs, except speech and language improvement services, are required to be provided uniformly in every school district. Instead, the federal or state government makes funding available to local school districts for these programs. Generally, if a district chooses to accept funding and participate in the program, there are mandates concerning use of the funds. Parents and advocates are advised to request written copies of materials outlining the programs offered in the district involved.

This chapter includes a brief overview of the following services or programs:

**A. Speech and Language Improvement Services**
**B. Services for Gifted Pupils**
**C. Educationally Related Support Services (ERSS)**
**D. Instructional Programs for Pupils with Special Educational Needs**
**E. Programs for Pupils with Compensatory Needs**
**F. CHAPTER I Programs**

## A. Speech and Language Improvement Services

Speech and language improvement services are provided by certified or licensed teachers of the speech and hearing handicapped to eligible students with speech impairments—such as dysfluency, impaired articulation, language disorders, or voice disorders.

A student is eligible if the student is in grades K through six and has a speech impairment which does not adversely affect educational performance such that the child needs to be in a special education setting, but does present a barrier to communication. Speech and language improvement services must be offered to every eligible student in the district.

## B. Services for Gifted Pupils

Pupils who show evidence of high performance capability and exceptional potential in areas such as general intellectual ability, special academic aptitude and outstanding ability in visual and performing arts are eligible for gifted services. This includes those pupils who require educational programs or services beyond those normally provided by the regular school program in order to realize their full potential.

Special and talented program aid is available to the school district with submission of a summary plan to the Commissioner of Education. However, these programs are not mandated.

## C. Educationally Related Support Services (ERSS)

Educationally Related Support Services (ERSS) are assessment and non-career counseling services provided by ERSS professionals to eligible students, individually or in groups, and related consultation services provided to their families and relevant school personnel for improving the academic achievement and attendance of these students. (See NY Educ. Law §3602(32); 8 N.Y.C.R.R. §100.1(r).)

The services are to be provided on a regular basis but may not exceed fifteen hours in any ten week period. The duration of services may not exceed thirty weeks (three ten-week periods), or forty five hours of service (15 hours per ten-week period). A school social worker, social counselor or school psychologist is an ERSS professional. 8 NYCRR §100.1(s).

Who is entitled to ERSS?

A school age child who is not suspected of having a handicapping condition and who is determined by the building principal in consultation with classroom teacher(s) and the building level ERSS professional(s) to meet the following conditions is eligible for ERSS services. The student must:

1. evidence educational, behavioral, personality or social difficulties that are situational and/or amenable to short term intervention;
2. not require intensive long-term intervention;
3. be able to benefit from short-term services provided as ERSS services;
4. be able to maintain the regular education placement if such services are received;
5. not be receiving the same or similar services under his or her regular educational program; and
6. not be eligible to receive substantially the same or similar services available through other state, local or federally funded programs. (See 8 NYCRR §100.2(v).)

How to Apply

The parent, person in parental relationship, a student, a school administrator, or a member of the instructional staff must make a written request to the building principal.

Review Procedures

The ERSS professional who is to provide the services is required to notify the parent or person in parental relation of the progress of ERSS at least once per any ten-week period, unless such notification would be detrimental to the health or safety of the student as determined by the building principal in consultation with the ERSS professional and the student. Notification shall include the frequency and duration of services. (See 8 NYCRR §100.2(v)(5).)

## D. Instructional Programs for Pupils with Special Educational Needs

Instructional Programs for Pupils with Special Educational Needs (PSEN) are established under 8 NYCRR §149-1. There are three categories of students who are eligible for PSEN services. These are:

1. Pupils in grades 3-12 who score below the statewide reference point (SRP) on any state mandated test;
2. Pupils in grades K-2 whose scores or evaluations on a test or acceptable uniform formal screening procedure attain a score which predicts serious deficiencies in reading, writing and/or mathematics by the time the child enters grade 3;
3. Pupils who by reason of limited English proficiency are unable to attain a score above the SRP on a state mandated test or an equivalent score on any other acceptable test.

A student who falls in one of the three categories is entitled to participate in "educationally advantageous" programs. These are instructional programs in reading, writing, math, science, American history and government and/or global studies using bilingual methodology where appropriate, which include the following:

- Specific learning objectives to provide significant improvement of a student's educational deficiencies;
- Written documentation of activities and services designed to achieve learning objectives for pupils in need of remedial instruction; and
- Evaluation procedures which clearly measure the effects of activities and services on the pupil participating in the remedial program. (8 NYCRR §149-1.2(c).)

### E. Programs for Pupils with Compensatory Educational Needs

To the extent possible given its apportionment of state aid, a school district must provide services to students with "compensatory educational needs". (8 NYCRR §149-3.) There are five categories of students with compensatory educational needs. These are:

1. Students who score below the SRP on any state-mandated standardized test of grade 3 or 6 math or reading, or grade 5 writing, or who score below a point equivalent to the SRP on any other acceptable test;
2. Students who score below the SRP on any State Preliminary Competency Test in reading or writing, or

Regents Competency Test in reading, writing, science, American history and government or global studies;

3. Kindergarten through third grade students determined to have deficiencies in reading, writing or math through a district-wide screening procedure which includes evaluation of learning performance and a determination of affective or cognitive needs by their teachers;

4. Students who, by reason of limited English proficiency, score below an SRP on a proficiency exam administered in English; and

5. Other students who, in grades 1—8, are failing in two or more academic areas required by the district for promotion to a higher grade; or in grades 9—12, are failing two or more courses for which at least two credits may be earned toward the high school diploma.

Students who are determined to have compensatory educational needs are entitled to instruction using materials and techniques specifically designed to meet the individual instructional needs of the student and should be adjusted as appropriate according to the student's progress. Compensatory services may include the following:

- small group instruction;
- individual tutoring;
- special assistance in the classroom using strategies specifically appropriate to that student;
- use of educational technology; or
- after-school or summer school remedial programs.

These programs are among those recommended, but not required, for a district to follow.

## F. CHAPTER I PROGRAMS[14]

"Chapter I" is the largest federal education program. It was most recently amended by Title I of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 and is codified at 20 U.S.C. §2701 et seq. Chapter I funding is provided to school districts based on their numbers of low-income children "to meet the special needs of . . . educationally deprived children at the preschool, elementary, and secondary levels." 20 USC §2701(a)(2)(A).[15]

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[14] Reg. Off. of Dep't of Educ. Chapter I, Off. for Civil Rights, Educ., 34 CFR §100.1 et seq. (1992).

Chapter I is intended to provide opportunities for educationally deprived children to enable them to:

- succeed in the district's regular program;
- attain grade level proficiency; and
- improve students achievement of basic and more advanced skills.

In implementing Chapter I, schools may institute "supplemental educational" programs, schoolwide programs, and programs to increase the involvement of parents in their children's education. (20 USC §2701(b); 34 CFR §200.1.) Since the federal guidelines are quite broad, Chapter I programs can vary enormously from school district to school district. However, the design of all Chapter I programs must include the following:

- needs assessment;
- selection of attendance zones;
- determination of program goals and objectives;
- implementation of projects;
- program evaluation; and
- program redesign, based on the evaluation.

To learn about the Chapter I program in your school district, call the district's central administration number and ask for the Chapter I administrator.

In addition to becoming familiar with your local Chapter I program, parents need to understand the legal mandate for parent involvement which governs Chapter I programs. This mandate provides a powerful opportunity for parents to advocate for Chapter I services that are responsive to the needs of children in their community.

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[15] For an excellent overview of Chapter I see Chapter I: A Legal Overview, by Jessica Levin of the National Chapter I Advocacy Project, CENTER FOR LAW AND EDUCATION.

## Parent Involvement

Section 1016 of the federal law requires ongoing consultation with parents in designing and implementing Chapter I programs. To carry out this duty, schools must develop policies to insure that parent involvement is adequate. Most school districts already have these policies in place. They must include a policy on parent consultation and involvement, a policy to ensure adequate review of program plans and evaluations by Chapter I parents and the public, and procedures for ensuring timely responses to parents' recommendations.

Parents should request a copy of the school district's written parent involvement policies as required by 20 USC §2726(c)(1); 34 CFR §200.34(b)(1) and (c)(5-6). In particular, it is important to review the policy and to be sure it includes the following requirements:

| | |
|---|---|
| ANNUAL MEETINGS | Procedures for conducting the initial yearly meeting and all annual meetings including procedures for giving all parents of all eligible children adequate notice of the meeting. |
| REGULAR ONGOING PLANNING MEETINGS | Opportunity for parents to communicate among themselves, and ability to organize themselves in a manner of their own choosing. |
| PARENT INVOLVEMENT IN THE PROGRAM | Provision of resources and support to parents (e.g., meeting space, materials, communication facilities, and staff support; also transportation and day care for meetings). |
| HOME SUPPORT | Parents must be given programs, training and materials which build parents' capacity to improve their childrens' learning at home. |
| PARENT INVOLVEMENT IN THE PROGRAM | Opportunities for parents to view program operations; opportunities for parent involvement in program operations and support activities (which cannot be a substitute for parent consultation); and provision for consultations for parents of children who are eligible, but are not selected as Chapter I students in secondary schools. |

| | |
|---|---|
| PARENT INPUT | Specific methods for consulting with parents in designing and implementing each aspect of the Chapter I program (including all phases of the needs assessment, the selection of educational strategies, implementation of projects, and program evaluation; could include Parent Advisory Councils, regular open meetings for Chapter I parents, parent committees, individual student planning, the Head Start model or required sign-off by parent committee on all major decisions). |
| TIMELY INFORMATION ON THE PROGRAM | Provisions for school officials' timely responses to parent communications; and procedures for providing parents with relevant program documents on a timely basis (for example, applicable laws, regulations, and guidelines, proposed and final project applications, needs assessment documents, project plans, budget information, evaluation data and annual reviews). |
| PARENT TRAINING | Provision for parent training programs needed for effective consultation. |
| SUPPORT FOR NON-ENGLISH SPEAKING OR ILLITERATE PARENTS | Schools must ensure access to all parent involvement activities for parents whose primary language is not English or who lack literacy skills. |
| ANNUAL ASSESSMENT OF PARENT INVOLVEMENT | The effectiveness of parent involvement programs and their accessibility to all parents must be assessed annually. |
| COMPLAINT PROCEDURES | States must enact and follow complaint procedures to investigate and remedy violations of Chapter I laws filed by organizations, parents or other individuals. |

A key part of maintaining effective parent involvement is to make sure that communication among parents does not break down and that "parent input" continues to reflect the real, informed views of a broad base of Chapter I parents. Ongoing involvement of the Chapter I students themselves is also helpful.

A good, ongoing training program for parents, developed with parent input, may be central to maintaining effective involvement. Areas to cover include program operation, understanding parental rights and roles, how parents can work effectively with each other and with the school, as well as educational issues related to Chapter I programs.

If you have concerns about the existing parent involvement policies, voice your concerns to the district's Chapter I administrator or your Superintendent. Voicing your concerns in writing and with the support of other parents will strengthen your case.

## Other Rights of Parents

In addition to your specific rights under Chapter I, there are other legal rights which may help you to take an active role in the Chapter I program.

CONSTITUTIONAL RIGHT TO COMMUNICATE. Under the First Amendment, you have the right to speak out, to distribute literature, to assemble or meet, to petition or complain, and to form organizations in a manner of your own choosing. Further, once the school makes any of its facilities (e.g., regular meeting space, public address systems, copying machines, internal mail systems) available to any parent groups or outside groups, it must make those facilities available to your group on a non-discriminatory basis. Any school rules on time, place, and manner of expression must be narrowly tailored only to avoid substantial disruption of the educational process. The content of your expression is no basis for restricting it, even when harshly critical of school actions, unless it meets very narrow legal standards of defamation or obscenity or is both intended to and likely to provoke immediate violence or an illegal act. Neither you nor your children may be punished in any way for your exercising these constitutional rights.

ACCESS TO PUBLIC INFORMATION. Students and parents have the right to inspect and obtain copies of school documents —including Chapter I documents—under individual states' "public records" or "freedom of information" laws. (See Chapter Three in this manual.)

ACCESS TO STUDENT RECORDS. The Family Educational Rights and Privacy Act (FERPA) gives parents (and students, if over 18, or with the consent of parents) the right to inspect all recorded information about the student maintained anywhere and in any form by the school system (except personal notes maintained by a teacher or other official which are not disclosed to anyone else), and to obtain copies at a reasonable cost when information is released to a third party or when denial of copies would effectively deny the right to inspection. The law also prohibits disclosure to third parties outside of the school system without written, informed parental consent (with certain exceptions such as for court orders); and allows parents to challenge information in the records by requesting amendment or deletion, obtaining a hearing, and/or adding a statement to the file.

## Outside Help

If you feel that you need outside help in obtaining or enforcing your rights concerning Chapter I, there are a variety of sources:

- Local legal services program (if low-income)
- Local advocacy organizations
- New York State Education Department
  Education Building
  Albany, NY 12234
- National Chapter I Advocacy Project
  1875 Connecticut Ave., N.W., #510
  Washington, DC 20009
- Center for Law and Education
  955 Massachusetts Avenue
  Cambridge, MA 02138
  (617) 876-6611
- Children's Defense Fund
  122 C Street, N.W.
  Washington, DC 20001
  (202) 628-8787
- Lawyers' Committee for Civil Rights Under Law
  1400 Eye Street, N.W.
  Washington, DC 20005
  (202) 371-1212
- National Committee for Citizens in Education
  10840 Little Patuxent Parkway, Suite 301
  Columbia, MD 21044
  (301) 997-9300

In addition, the Center for Law and Education provides copies of its Chapter I Advocacy Handbook free of charge to Chapter I parents. Copies may be ordered from the Center in Cambridge, MA by calling (617) 876-6611.

BEST COPY AVAILABLE

# CHAPTER SIX:

# SERVICES FOR
STUDENTS WITH DISABILITIES

## Chapter Six:

## Services for Students with Disabilities

The goal of the laws and regulations pertaining to students with disabilities is to ensure that every student whether disabled or not has an equal opportunity to benefit from public education. A "Free Appropriate Public Education" (FAPE) is the right of every student, regardless of the child's ability. If your child is doing poorly in school, his or her education may not be appropriate. In this case, additional educational services are the right of you and your child.

The service system for students with disabilities include a wide range of services available to children who have needs different from the majority of their peers. This system includes a vast range of entitlements, some covered by the term "special education" and some of which are accommodations to regular education programs.

The goal of special education services is to enable every child to participate in and benefit equally from the educational program in the public schools. Special education is often misunderstood, causing parents to avoid these services. However, if properly implemented, they are a valuable resource for parents and children who need different modifications or additional programs to derive the maximum benefit from their education.

This chapter is designed as an overview of the range of available services for students with disabilities under federal and New York State laws and includes the following sections:

**A. Summary of the Laws Governing the Education of Disabled Students**
**B. Why Parents Should Consider Special Education**
**C. Early Intervention Serivces: Children from Birth to 3**
**D. Preschool Special Education: Children from 3 to 5**
**E. Committee on Special Education: Students from 5 to 21**
**F. Description of Selected Services in Special Education**
**G. Declassification: Leaving Special Education**
**H. Due Process for Special Education Students**

## A. Summary of the Laws Governing the Education of Disabled Students

In the past twenty years, vast changes have been made in the availability of educational services to children with disabilities. As recently as 1975, nearly two million children were estimated to be totally excluded from free public education. Since that time, both state and federal laws have been vastly expanded and now are intended to cover every eligible child.

There are many laws and regulations with an impact on educational services for students with disabilities and the interplay among them can be confusing. It may be useful for parents and advocates to think in terms of the broadest and most powerful laws down to the narrowest and most specific.

Federal laws supersede those of individual states, and state law supersedes that of municipalities and local school districts. On another level, the law in a particular area is the theoretical principle which is defined and interpreted in regulations. Your rights are in the law. The rules which must be followed in enforcing those rights are found in regulations and school district policies.

### Federal Laws

▸ Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (See also, regulations implementing Section 504 at 34 C.F.R. §10433 [a].)

In addition to the right to a FAPE, Section 504:

- Prevents discrimination against persons with handicapping conditions regardless of the nature or severity of the handicap; and
- Applies to all educational programs in the United States that receive federal funding.

Provisions of Section 504 are enforced by the federal Office of Civil Rights (OCR).[16]

▸ IDEA: Individuals with Disabilities Education Act, P.L. 101-476; 20 U.S.C. §1401. IDEA consists of seven federal special education statutes. On October 30, 1990, the IDEA reauthorized the Education of the Handicapped Act (EHA), which was originally passed in 1970. For purposes of clarity, the Act will be referred to throughout this chapter as IDEA.

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[16] See the listing for the New York Office of Civil Rights (OCR) in Appendix I.

IDEA is a federal funding statute which creates an enforceable right to a free, appropriate public education for disabled students in the least restrictive environment and conditions federal funding on compliance by school districts. It establishes procedural safeguards regarding changes in placement, due process and discipline of special education students. The principal statute of IDEA of relevance to parents and advocates is Public Law 94-142: The Education of All Handicapped Children Act of 1975 (EAHCA), originally passed as an amendment to EHA. The six key provisions of P.L. 94-142 are set forth below:

- o Educational services for all handicapped children from birth to age 21;
- o Non-discriminatory testing;
- o Individually designed appropriate programs at no cost, ("FAPE");
- o Education in the Least Restrictive Environment;
- o Due process: right of parents to receive notice and to challenge decisions; and
- o Parent participation in decision making.

In addition to reauthorizing the EHA, the IDEA added two important rights: the requirement of a transition plan for disabled students at age 16 (and when determined appropriate for the individual at age 14 or younger); and the right to receive assistive technology devices necessary to receive a free appropriate public education (FAPE) and to include this on the student's IEP. (The New York State Education Department lowered the age at which a transition plan is required to 15.)

▸ Americans with Disabilities Act of 1990 (ADA), P.L. 101-3363, prohibits discrimination against individuals with disabilities and requires extensive accommodations in facilities.

## **N.Y.S. Education Law and Regulations**

▸ Article 85 (N.Y. Education Law §§4401-10) governs the provision of special education services to disabled students in the state, and:

- o Requires school districts in New York State to provide "suitable educational opportunities" in a manner which enables children with "handicapping conditions" to participate in regular education services when appropriate;
- o Protects parents and children from changes in educational placement made without their consent and without review by the CSE (including at least the school psychologist, special education teacher or administrator, school physician and parent member); and
- o Guarantees equal access for disabled students to extracurricular activities.

▸ Regulations under (8 NYCRR §200[ff]) (often referred to as "Part 200 Regulations") establish specific due process rights and procedures for disabled students as outlined in this chapter and as mandated by Section 504 and IDEA.

### B. Why Parents Should Consider Special Education

Parents with children who are experiencing difficulty in school are faced with great anxiety and often uncertainty as to where the problem is rooted and how to intervene effectively. We all want our children to succeed. It is easy to overlook our children's faults and hope that their problems will be cured by time. This approach, while understandable, may be highly damaging to your child's optimum ability to learn.

Given the perceived stigma of special education, parents frequently are cautious about consenting to special education fearing that, once "branded," their child will be prevented from ever returning to a regular education setting. The classification system for special education is merely a means by which appropriate services are determined in order to help your child succeed in his or her educational placement. Remember, these services are designed to assist your child to obtain his or her legal right to **equal** access to education. To a learning disabled child, this means designing a program to enable that child to understand the same information and perform the same tasks as a non-learning disabled child. To a student who cannot walk, this means designing facilities to accommodate a wheelchair.

As you consider whether or not to consent to the free evaluation required by law to determine your child's needs, consider the following:

- Whether your child is succeeding in school without special help.
- How the Individualized Education Plan (IEP) which would be drawn up with your consent will remove the burden of educational success from you and your child and place that burden on the array of Special Education services the IEP guarantees.
- If your child fails in the regular program, he or she will be retained in grade. If your child fails in Special Education, the IEP must be modified to provide more appropriate services.
- All Special Education services are provided at no cost to the family.

Free, appropriate educational services and entitlements are available to disabled children from birth through age 21. The service systems contacts and educational plans available to students differ according to the child's age. The following chart identifies the differences.

| Age of Disabled Child | Service System | To Obtain Services, Contact: | Service |
|---|---|---|---|
| Birth to 2yrs 11mos | County Health Department | Early Intervention Program | IFSP |
| 3yrs to 4yrs 11mos | Local School District | Committee on Preschool Education (CPSE) | IEP |
| 5yrs to 21yrs | Local School District | Committee on Special Education (CSE) | IEP |

## C. Early Intervention Services: Children from Birth to 3

In 1986, P.L. 99-457 was enacted to provide incentives to states to lower eligibility to services for disabled children to includes Early Intervention Services for children from birth to age three (2yrs., 11mos.) under Part H of IDEA. The New York State counterpart of the Part H, Early Intervention System is Chapter 428 of the Laws of 1992, signed on September 17, 1992.

Chapter 428 became effective on July 1, 1993 with services beginning on September 1, 1993. Chapter 428 designates the Department of Health as the lead agency providing early intervention services in New York State with county health departments as contacts. This section summarizes the current law; however, it must be stressed that as the system evolves, it is bound to be revised. Given the number of issues related to early intervention services which remain unresolved and the lack of experience with the new process, parents and advocates seeking early intervention services are strongly advised to consult with Student Advocacy or with their local Early Childhood Direction Center. (See Appendix I for coordinating office contact for ECDC.)

The vision of the early intervention system in New York State is to change the approach of early services for disabled children to provide family-centered services responsive to the individual concerns, priorities and strengths of each family. Families are respected for knowing their infants and toddlers and are given a central role in developing the Individualized Family Service Plan (IFSP).

The parent of an infant or toddler with disabilities arguably is the most overwhelmed of parents and is least likely to have a clear understanding of the available services. Not only is the law in flux, but the child's condition may be undiagnosed and the appropriate treatment unclear. In many cases, parents and the medical community may not know they are entitled to any services. The remainder of this section will help clarify the Early Intervention System which involves the following components:

| | |
|---|---|
| CHILD FIND | Identification of children likely to benefit from the program |
| EVALUATION | Comprehensive, multi-disciplinary evaluations of children to determine eligibility for the program and identify service needs |
| SERVICE COORDINATION | Case management for eligible children and their families |
| INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP) | For eligible children and their families |

### How Does the Early Intervention System Work?

#### Who Is Eligible?

Eligibility for Early Intervention Services as identified by the Infant Health Assessment Program (IHAP) requires that children must be under three years of age, birth to age 2.11 years, have a diagnosed condition with a high probability of resulting in developmental delay and/or have a significant delay or disability in one or more of the following developmental domains:

- Physical development (sensory-motor)
- Communication development (speech/language)
- Adaptive development (self-help skills)
- Cognitive development (early learning and reasoning skills)
- Socioemotional development (appropriate age-level socialization skills and emotional levels)

Conditions recognized by IHAP as involving a high probability of developmental delay include:

- Gestation less than 33 weeks
- Birth weight under 1800 grams
- 10 or more days in a neonatal or special care unit
- Born to a mother under 16 years of age
- Presence of inborn metabolic deficiency
- Presence of major congenital anomaly
- Other criteria determined by the local health unit
- Positive maternal hepatitis B result

## How Are Services Accessed?

**Referrals:** The "single point of entry" is the County Department of Health.

The following persons must refer children—if the parents have given their consent—within two school days of identification of a child who is suspected of having a handicap:

- Hospitals
- Child Health Care Providers
- Day Care Programs
- Local School Districts
- Public Health Facilities
- Early Childhood Direction Centers

No referrals may be made over the objection of a parent.

If a parent consents to enter the system, an Initial Service Coordinator is assigned to: inform families of choices; assist in accessing evaluations and services; explain payment procedures; and assist in transition to pre-school services (CPSE).

**Free Evaluation:** a multidisciplinary evaluation must be performed by an approved evaluator to assess the needs of the child and family.

## What Services Are Available?

Early Intervention Services include (but are not limited to):

- Speech pathology and audiology
- Physical therapy
- Occupational therapy
- Special instruction
- Psychological services
- Family training, counseling and home visits
- Medical services only for diagnostic and evaluation purposes
- Early identification, screening and assessment services
- Health services necessary to enable infant or toddler to benefit from other Early Intervention Services
- Necessary transportation to receive services
- Vision services
- Assistive technology devices and services
- Nutrition services

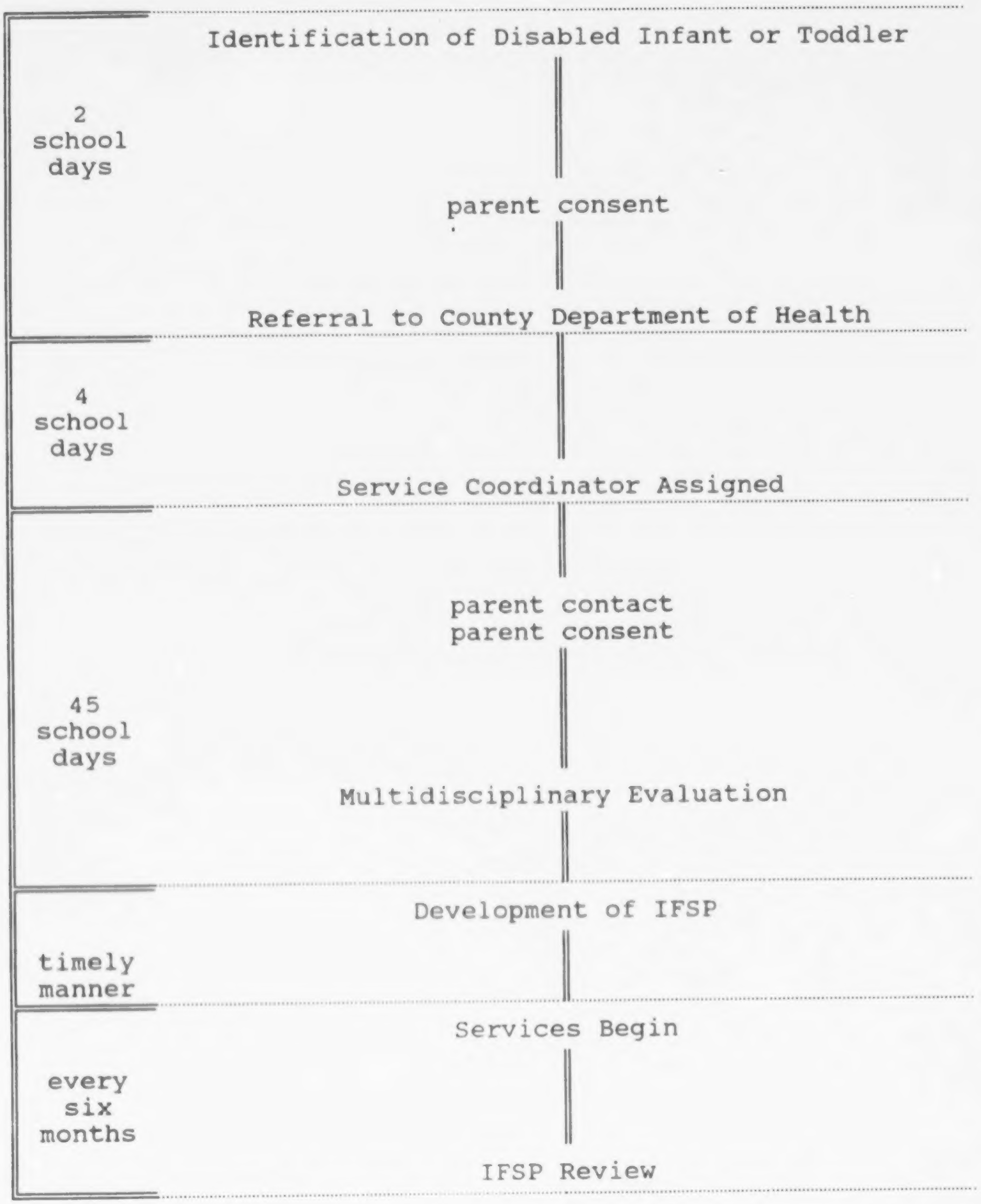
All services must be detailed in the IFSP.

## Where Are Services Provided?

Services for infants and toddlers are to be in the "natural environment" of the individual child, including:

- Home
- Day Care Center
- Other Community-Based Setting

Early Intervention Time Line


Identification of Disabled Infant or Toddler
2 school days
parent consent
Referral to County Department of Health
4 school days
Service Coordinator Assigned
parent contact
parent consent
45 school days
Multidisciplinary Evaluation
Development of IFSP
timely manner
Services Begin
every six months
IFSP Review

## D. Preschool Special Education: Children Age 3—5

The same federal law that mandates early intervention services, Public Law 99-457, was enacted in 1986 to provide incentives to states to lower the eligibility age for special education services under IDEA Part B to age 3. Section 4410 of N.Y. Education Law and Part 200 Regulations set forth the guidelines for services for children 3 to 5 years of age in New York State.

In general, once a disabled child reaches age 3, he or she enters the service system of the school district of residence through the Committee on Preschool Special Education (CPSE) and is no longer under the jurisdiction of the county health department. In order to facilitate the transition from early intervention services to CPSE, children who are 2 or 3 who have been in an infant and toddler program may continue in that program if their birthdays are during the school year, or begin a preschool program in the year in which they turn three. Services are to begin no later than the third birthday and school districts should not merely begin the evaluation process at that time.

### Who is Eligible for Preschool Services?

Under 8 NYCRR §200.1, a child eligible for preschool special education programs and services is a child:

- between the ages of three and five[17]; and
- who—because of mental, physical or emotional reasons—has been identified as having a handicapping condition (see classification system in Appendix B).

The federal law mandates that children ages three to five may also be designated as handicapped and eligible for services if they are experiencing developmental delays. (20 U.S.C.A. §1401 (a)(1)(B)(1992).)

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[17] Age eligibility is determined as follows: a) If the child's birthday is before July 1, eligibility for services begins on January 2 of the year in which he or she turns 3; or b) If the child's birthday is between July 1 and December 31, eligibility begins on July 1 of the year in which he or she turns 3.

Eligibility continues through August of the year in which the child turns 5 and becomes eligible for services under §3202 of N.Y. Education Law.

## How Are Services Accessed?

In New York State, the process of obtaining Special Education services for a child of preschool age (3-5) is referral to the Committee on Preschool Special Education (CPSE). Upon referral, the CPSE determines if the child has a handicapping condition through a free, multidisciplinary evaluation. If the child is eligible for services, the CPSE plans the programs and services that will be provided in an Individualized Education Plan (IEP). The process continues with at least an annual review of the child's educational progress to determine if he or she is eligible to continue to receive preschool special education services and, if so, to update the IEP.

Prior to implementing services for a child, parents meet with the CPSE and the child's teacher to develop a recommended educational program. Once the child is in the recommended program, parents must be given an opportunity to meet with their child's teacher and any other professional involved to review and assess whether the program is appropriately meeting the child's current needs. Generally, the younger the child, the more frequently his or her IEP should be reviewed and—if necessary—revised. If you see your child changing rapidly, you should review the IEP and speak with the classroom teacher to be sure the goals are still appropriate.

Referral of other children suspected of having a handicapping condition should be made in writing to the chairperson of the Committee on Preschool Special Education in the school district of residency by a parent or any of the following:

- Licensed physician
- Professional staff in the school district or in an approved preschool program
- Early Childhood Direction Center
- Early Intervention Program (Service Coordinator)
- Judicial officer
- Commissioner or designee of a public agency responsible for education, health or welfare of children

If one of these professionals makes the referral, the written referral should be accompanied by a statement of the extent of contact with the child's parent and the reason for referral. (8 NYCRR §200.4[a][2].) If another professional member of the school district receives the referral, he or she must forward it immediately to the CPSE chairperson.

For a child not previously identified as having a handicapping condition, the school district has 30 school days from receipt of consent, or 40 days from receipt of the referral, whichever is earlier, to evaluate the student and hold a CPSE meeting. It is essential to know when the school district received the referral, so the letter should be sent "return receipt requested."

The basis for determining eligibility, assigning a classification, and developing the IEP is the evaluative information gathered by the CPSE on the child's level of performance in the areas of academic or educational achievement and learning characteristics, physical and social development, and consideration of the management needs of the child. The evaluation is conducted by a multidisciplinary team which may include a psychologist, speech therapist, physical therapist, or others as necessary to determine the child's service needs. Evaluations must be provided to parents in their dominant language. 8 NYCRR §200.4(4)(viii). A parent may seek additional evaluations, or request an independent evaluation if the parent believes the initial evaluation is inadequate to assess the child's needs. Additional evaluative information can be provided at the CPSE meeting by the classroom teachers and parents.

Members of the CPSE must include: a school district professional; a parent member of a preschool disabled child; a professional who conducted an evaluation of the child; and an early intervention service coordinator, if any.

If the CPSE determines that the child is eligible, the development of the IEP begins. The IEP should specify the educational program and services which must be provided to assist the student. The IEP may be modified or revised to change services or goals at further CPSE meetings. Parents should put requests for meetings in writing to the CPSE chair.

## What Services are Available?

The services available to handicapped preschoolers should be determined on an individual basis according to the child's specific needs and in order to afford that child access to a free, appropriate public education. In contrast to the "natural environment" philosophy of the early intervention system, preschoolers are best served in an appropriate program in the least restrictive environment allowing for a greater socialization with "related services" or "itinerant services" as necessary.

In addition to the educational program provided for the handicapped preschool child, the following are among the services to which that child may be entitled:

- Speech pathology and audiology
- Physical therapy
- Occupational therapy
- Psychological services
- Evaluations including any medical services for diagnostic or evaluation purposes
- Health services necessary to benefit from education
- Transportation necessary to access services
- Vision services
- Assistive technology and services

Each handicapped child's IEP should clearly specify the exact nature of each service to be offered, including the number of sessions per week, the duration of each session and if relevant, whether the service is to be offered in a group or individual setting. It should also include the date the services are to begin and the end date, if identified.

## HOW DOES PRESCHOOL SPECIAL EDUCATION WORK?

### Referral

The CPSE Chairperson receives **referral**

If received by a professional member of the school district, referral must be forwarded to the chairperson of the CPSE immediately.

CPSE **notifies** parent(s) immediately upon receipt of referral, and includes:

- list of approved evaluators
- request for consent to evaluate
- due process rights

### Evaluation

Parent(s) give(s) written consent for the evaluation.

If consent to evaluate is not provided, the CPSE implements the district's procedures to ensure that the parent has received and understands the request for consent.

Once parental consent is received, the CPSE has 30 days to make a recommendation. The CPSE:

- arranges for evaluation/assessment and
- gathers additional evaluation information.

Evaluator conducts individual evaluation and sends results—including recommendation—to all members of the CPSE.

CPSE provides parent(s) with:

- a copy of the evaluation summary and the evaluator's recommendations
- notice of CPSE meeting

## Recommendation (IEP)

The CPSE holds meeting and reviews information.

If CPSE determines child to be ineligible for special education—

- CPSE provides notice to parent(s) and Board of Education (BOE), and includes:
  - recommendations
  - tests/reports
  - right to hearing
  - due process rights

If CPSE determines child to be eligible for special education—

- CPSE, parent(s), and child's teacher develop the IEP
- CPSE provides notice to parent(s) and BOE, and includes:
  - recommendation
  - tests/reports
  - due process rights (includes right to hearing)
  - request for consent for placement

## Arranging for Entrance Into Recommended Setting

CPSE notifies parent(s) and the Commissioner of its determination.

Parent gives written consent to the IEP. If parent does not consent, the CPSE terminates action.

Child enters recommended setting and services begin.

## Parent Conference

A parent conference should be scheduled within a reasonable time after the child's services begin. The parent conference should be attended by the child's teacher, parent, and others at the discretion of the agency or parent.

Written notice must be given to the appropriate people 5 days prior to the meeting. The meeting must be scheduled at a time and date that is convenient for the parents.

Parent conference participants assess and modify IEP goals, as needed.

## IEP Review

CPSE must notify parents of the annual review, including the purpose of the meeting and their due process rights.

CPSE notifies parent(s) of its decision

### Parental Rights

The following information outlines the steps involved in the development and continual updating of the IEP for children with handicapping conditions.

To ensure that parents are fully informed, proper notice of any CPSE action must be provided to parents. To be adequate, notice must be given within a reasonable time prior to the action, and must include:

- Written description of proposed evaluation, recommendation or determination
- Description of other options considered
- Reason and basis for proposed option
- Due process rights

To ensure that parents have given informed consent to their child's evaluation or entrance into Preschool Special Education, the CPSE must ensure that the parent:

- **understands** the activity for which consent is sought;
- **is notified** of intent to release any records related to the activity;
- **agrees in writing** to the activity; and
- **is aware** that consent is voluntary and may be reconsidered at any time.

Points at Which Consent is Sought

When parents are notified of the initial evaluation or review and asked for their consent, they have a right to the following:

- Evaluation or review plan—
  - Described
  - Use of information
- A list of approved evaluation sites
- Access to records and all other information to be submitted
- Parents also have the right to submit evaluation information from other sources.
- CPSE meeting to develop recommendation (IEP)
- Opportunity to participate
- Right to have others attend
- Notice of date, time, and location of meeting
- Due process rights
- Request for consent for evaluation to be conducted at an approved site chosen by parent(s)

When parents receive notice of the CPSE's recommendation and are asked for their consent, the notice must include:

- Details of the Recommendation
- Tests or reports specified
- Due process rights
- Return form for consent for initial provision of special education

Preschool Special Education Time Line

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| | Referral |
| immediately | |
| | Parent Consent |
| 40 school days from receipt of referral, or<br>30 school days from receipt of consent (whichever is earlier) | Multidisciplinary Evaluation |
| | Development of IEP (CPSE Meeting) |
| 30 school days | |
| | Services Begin |
| within one year | |
| | Annual Review |

## E. Committee on Special Education: Students from 5 to 21[18]

Due to the extensive advocacy of parents and professionals throughout the 1960's and 1970's, the laws protecting the educational rights of school age (5-21) disabled students were enacted. Since that time, the laws and the rights they protect have changed and expanded to more effectively meet current issues and needs. At the federal level, Section 504 of the Rehabilitation Act, passed in 1973 and IDEA, originally passed in 1975 as the Education of All Handicapped Children Act, together guarantee students from 5-21 a free appropriate public education.

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[18] This manual provides an overview of the CSE. We have included a State Education Department Information Checklist at Appendix H to enable you to obtain more detailed information on special education law.

In New York State, the special education system is governed by §§4401—10 of the Education Law and Part 200 of the Regulations of the Commissioner of Education.

The Special Education process involves six steps, each of which must be performed in compliance with state and federal laws. The steps are:

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| **REFERRAL** | identification by parents, professionals or others of children who may need special education |
| **EVALUATION** | collection of information about the child through comprehensive multidisciplinary assessments by qualified professionals |
| **RECOMMENDATION (IEP)** | Development of an individualized education plan (IEP) detailing an appropriate program to meet the child's educational needs |
| **IMPLEMENTATION** | Arranging for programs and services to provide the appropriate education in the Least Restrictive Environment |
| **ANNUAL REVIEW** | Evaluation of the program and updating and revising the IEP to reflect the child's changing needs: may include further professional assessments |
| **TRIENNIAL EVALUATION** | Updating of all tests and evaluative information must be performed at 3 year intervals |

The process continues with at least an annual review as long as special education services are needed (if services are no longer needed the student is "declassified") or until the student either attains a high school diploma or the end of the year in which the student reaches the age of twenty-one.

Who Is Eligible?

To be eligible for special education under IDEA, a child aged 5 -21 must fall within one of the categories of disabilities established in the law and it must be shown that the child's disability interferes with his or her ability to learn. In other words, an eligible child must have disabilities such that he or she requires special education and related services to receive an appropriate education. Examples of recognized disabilities include hearing-impaired, speech and language impaired, emotionally disturbed or other health impaired (See Appendix B for a complete list.)

In contrast to the IDEA eligibility standards which are based on educational access, Section 504 of the Rehabilitation Act emphasizes equal treatment of students with handicaps. A child classified as handicapped and eligible for special education under IDEA is also eligible for services by virtue of Section 504. However, Section 504 is broader than IDEA and covers certain children not "classifiable" under IDEA.

The definition of an individual with handicaps under the Rehabilitation Act is one

> who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. 29 U.S.C.A. §706(8).

A child who meets the Rehabilitation Act definition, but who is not "classified," must also be provided services by school districts. Every school is required to have a Section 504 Coordinator and committee. Parents whose children are denied services under the IDEA by the CSE should refer their child to the 504 committee, if appropriate.

## How Are Services Accessed?

Ideally, schools would identify every child with a handicap and work quickly to design and implement a specially designed instructional program to meet that child's special needs. In practice, this does not always happen. Therefore, it is essential for parents and advocates to understand the special education process, from the initial identification and referral of the student, to the design of the program, its implementation and the procedures for reviewing and revising the program to address the student's changing needs.

Within a school system, a variety of referrals are made to school professionals. Some of these referrals are made for the purpose of assisting the teacher in providing an appropriate regular education. A referral which initiates CSE involvement differs from the others in a number of ways, one being that the referring person must state in writing the basis for the belief that the student has a handicapping condition.

## What Services are Available?

The services available to disabled students should be determined on an individual basis according to the student's specific needs and in order to afford that young person access to a free, appropriate education. To guide the development and implementation of individualized services, an Individualized Education Plan (IEP) is created for each special education student. The basis for development of the IEP is the evaluative information gathered by the CSE on the student's level of performance in such areas as academic achievement and learning characteristics, physical and social development, and the management needs of the student in the school. The IEP should specify all services which must be provided in order to ensure an appropriate education given the student's disability.

Available services fall into two broad categories: educational services and related services. Educational services revolve around the instructional program. Related services are those necessary to assist the child to benefit from his or her special education program. One of the critical premises of IDEA is that all children, regardless of the severity of the disability, can benefit from education and therefore are entitled to receive it through a program designed to meet each child's unique needs.

To prevent segregation of handicapped students, the educational program must be provided in the least restrictive environment (LRE). On a continuum, the range of possible educational services from least to most restrictive is as follows:

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| Related Service | These services augment the mainstream classroom. Examples include an adaptive physical education class or provision of a teacher consultant. |
| Resource Room | The child attends the mainstream program but attends a separate class to receive special help (often referred to as a "pull out" program). |
| Self-Contained Classroom | The child attends special classes throughout the school day but attends the mainstream program for some sessions such as lunch, music, or gym. |

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| Self-Contained Classroom: Out of District | The child attends a self-contained classroom program, as described above, but the program is located in another school district. |
| BOCES Program | The child attends special classes at a regional BOCES site. |
| Day Program | The child attends a private day program approved by the NYS Education Department. |
| Residential Placement | The child lives at a private residential program approved by the NYS Education Department. |
| Home and Hospital | Home and The most restrictive environment is home instruction, or instruction provided on-site to a hospitalized child. |

In addition to the educational program provided, the following are among the related services to which that child may be entitled:

- Speech pathology and audiology
- Physical therapy
- Occupational therapy
- Psychological services
- Evaluations including any medical services for diagnostic or evaluation purposes
- Health services necessary to benefit from education
- Transportation necessary to access services
- Vision services
- Assistive technology and services

Each handicapped child's IEP should clearly specify the exact nature of each service to be offered, including the number of sessions per week, the duration of each session and if relevant, whether the service is to be offered in a group or individual setting. It should also include the date the services are to begin and the end date, if identified.

## HOW DOES THE SPECIAL EDUCATION SYSTEM WORK?

### Referral

A referral to the Committee on Special Education can be made by a parent, a student over 18, an emancipated minor, or a judicial officer. When a referral to the Committee on Special Education (CSE) is submitted by an individual other than the pupil, a person in parental relationship or a judicial officer, the referral must:

- State the reasons, in writing, for the referral and include any test results, records or reports upon which the referral is based unless such test results, records or reports are unavailable
- Describe attempts to remediate the pupil's performance prior to referral including any supplementary aids or support services or state the reasons such attempts were not made
- Describe the extent of contact or involvement with the parent or person in parental relationship prior to the referral

A referral made by a person in parental relationship or a pupil must be submitted in writing to the chairperson of the committee on special education or the principal of the school the pupil attends. The CSE chairperson must inform the building administrator within 5 days of receipt of the referral. If the building administrator or any other staff member receives a CSE referral, the referral must be forwarded to the CSE chairperson immediately.

Where the child is referred by school personnel, the parent has a right to request an informal conference with the CSE and relevant school professionals to discuss the referral and the possibility of entering a written agreement to withdraw the referral and to set out a plan to address the problems with an opportunity for a follow-up conference.

Upon receipt of referral, the CSE must immediately notify parent(s) in their primary language of the following:

- evaluation plan
- request for consent
- physician's attendance (72 hour notice)
- due process

Upon a referral, a building administrator may request a meeting with the parent, person in parental relationship and/or the pupil to discuss educational alternatives to special education including:

- Educationally related support services
- Remediation
- Speech and language improvement services

If a parent and building administrator agree in writing to the provision of educational alternatives to special education, the referral shall be deemed withdrawn. The parent and building administrator must agree in writing. A copy of the agreement should be provided to the CSE chair, professional staff member, parent(s) and student.

## Evaluation

Parent(s) give(s) written consent for evaluation.

The CSE arranges for the evaluation/assessment and gathers additional information.

The CSE holds a meeting to review and summarize the information.

## Recommendation (IEP)

If the CSE determines that the student is ineligible for special education, a copy of the committee's recommendation shall be sent to the principal who will determine whether ERSS services or speech and language improvement services should be provided to assist the child and provide the services to the extent available. The CSE must also provide notice to parent(s) and BOE of its recommendation, the test/reports, and due process rights.

If the CSE determines that the student is eligible for special education:

- CSE, parent(s) and student's teacher develop IEP
- CSE provides notice to parents and BOE, which includes:
    - recommendation
    - due process/rights
    - tests/reports
    - request consent

Note: Parents must be aware that if special education is appropriate for their child, it is their right and other remedial services do not include the same entitlements as special education classification.

## Arrange for Entrance into Recommended Setting

The CSE notifies parent(s) of its decision.
Parent(s) give written consent to IEP.
The student enters the recommended setting and services begin.

## Annual Review

The CSE provides to parent(s) notice of the annual review (in their primary language) including:

- purpose of meeting
- physician's attendance
- due process rights

The CSE and parent(s) review and revise the IEP. (If declassification is recommended, the CSE considers declassification support services for eligible students.)

The CSE provides notice to parent(s) and BOE regarding:

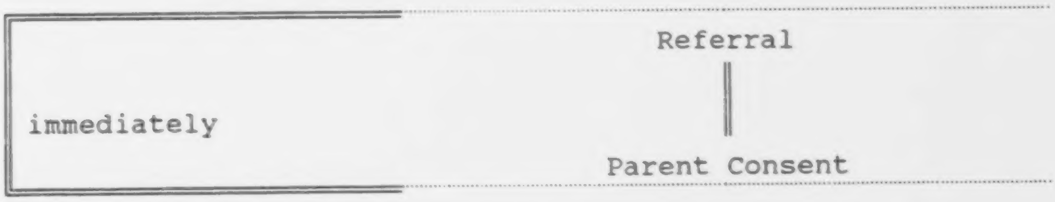
○ recommendation ○ tests/reports ○ due process rights

The CSE notifies parent(s) of its decision.

An appropriate reexamination must be conducted every three years (Triennial Evaluation) to assess:

- individual needs; and
- continuing eligibility.

**Special Education Time Line**



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| 40 school days from receipt of referral, or<br>30 school days from receipt of consent (whichever is earlier) | Multidisciplinary Evaluation<br>Development of IEP (CSE Meeting) |
| 30 school days | Services Begin |
| within one year | Annual Review |

Parental Rights

The following information outlines the steps involved in the development and continual updating of the IEP for children with handicapping conditions.

To ensure that parents are fully informed, proper notice of any CSE action must be provided to parents. To be adequate, notice must be given within a reasonable time prior to the action, and must include:

- Written description of proposed evaluation, recommendation or determination
- Description of other options considered
- Reason and basis for proposed option
- Due process rights

To ensure that parents have given informed consent to their child's evaluation or entrance into Special Education, the CSE must ensure that the parent:

- **understands** the activity for which consent is sought;
- **is notified** of intent to release any records related to the activity;
- **agrees in writing** to the activity; and
- **is aware** that consent is voluntary and may be reconsidered at any time.

For the annual review, the parent must be notified of:

- Evaluation or review plan
  - Described
  - Use of information
- Due Process Rights

When parents receive notice of the CSE's recommendation and are asked for their consent, the notice must include details of the recommendation. When formulating their decision, parents have the right to:

- Access records
- Submit evaluation information
- Meet to develop recommendations
  - Opportunity to participate
  - Right to have others attend
  - Notice of date, time, location of meeting
  - Right to request school physician's attendance (school must have 72 hours notice to comply)
  - Tests or reports specified
  - Return form for consent for initial provision of special education (new students only)
- Due process (see pp. 72-3)

## F. DESCRIPTION OF SELECTED SERVICES IN SPECIAL EDUCATION

TWELVE-MONTH EDUCATIONAL PROGRAMMING, 8 NYCRR §200.6(J)

### Who Is Eligible?

- Pupils with highly intensive management needs who require a high degree of individualized attention and intervention, placed in classes with a ratio of 6:1:1

- Pupils with severe multiple handicaps, whose programs consist of habilitation and treatment and are placed in special classes with a ratio of 12:4

- Pupils recommended for home and hospital instruction whose special education needs are intensive, requiring a high degree of individualized attention and intervention or whose multiple handicaps require primarily rehabilitation and treatment

- Pupils whose needs are so severe they can be met only in a seven day residential program or

- Pupils who because of their handicapping condition need a 12 month program in a structured learning environment in order to prevent substantial regression as determined by the CPSE or CSE. Substantial regression means a pupil's inability to maintain developmental levels due to a loss of skill or knowledge during July and August of such severity as to require an inordinate period of review at the beginning of the school year to reestablish and maintain IEP goals and objectives mastered during the previous school year.

## TEACHER CONSULTANT SERVICES

Direct consultant teacher services means specially designed individualized group instruction provided by a certified special education teacher to a pupil with a handicapping condition in order to aid such child to benefit from his or her regular education program. (8 NYCRR 200.1(mm))

Indirect consultant services means consultation provided by a certified special education teacher to regular education teachers to assist them in adjusting the classroom and/or modifying instructional methods to meet the individual needs of a pupil with a handicapping condition who attends their class.

Consultant teachers shall have no more than 20 students assigned to them.

Each pupil with a handicapping condition who requires consultant teacher services shall receive direct and/or indirect services consistent with their IEP for a minimum of 2 hours per week.

## TEST MODIFICATIONS

Students with disabilities are entitled to test modifications, if their disability is in any way impeded by the manner of testing, to allow them equal opportunity to demonstrate their knowledge or skills. The CSE is required to determine the appropriate techniques to be used and to specify these modifications on the student's IEP.

The school principal must ensure that the techniques are followed consistently on all tests, including statewide tests and examinations. Examples of testing modifications include revised test formats of directions, use of specialized equipment, flexible scheduling or flexibility in the setting in which the test is given.

## TRANSITION SERVICES

Since 1990, under IDEA, a statement of needed transition services is a required component of the IEP for every special education student 16 or older, and for some students beginning at age 14.

The goal of transition planning in the educational setting is to establish specific goals and objectives related to enabling a student with disabilities to live independently before leaving the school setting. The goals and objectives for vocational rehabilitation must be clearly stated in the student's IEP, and the school is responsible for coordinating the provision of transition services among all agencies involved with that student. (Sec. 103(a)(14))

### Who is entitled to Transition Services?

Any "individual with a disability," age 16 or over (and when determined appropriate for the individual at age 14 or younger) may benefit from transition services. In New York State, the Board of Regents has designated 15 as the age when transition services must first be provided. An "individual with a disability" is defined as anyone who:

1. Has a physical or mental impairment which substantially limits one or more major life activities,
2. Has a record of such impairment, or
3. Is regarded as having such an impairment.

"Transition services" as defined in the IDEA means a coordinated set of activities for a student designed within a process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment, continuing and adult education, adult services, independent living or community participation.) The activities must be based upon the individual student's preferences and interests; and must include instruction, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and functional vocational evaluation. (20 U.S.C. §§1401 (19) and (20))

In addition to defining transition services, the IDEA requires that such services must be specifically addressed in a student's Individualized Education Program (IEP). The federal definition of IEP has been amended to include:

- A statement of the needed transition services including, when appropriate, a statement of interagency responsibilities or linkages (or both) before the student leaves the school setting. The plan must be updated annually.

- In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the Committee on Special Education (CSE) to identify alternative strategies to meet the transition objectives or, if appropriate, develop new objectives.

The key terms in the transition service definition include:

1) A "coordinated set of activities." Transition services should be comprehensive, coordinated through the IEP, and designed to meet the needs of each student based upon his or her needs, preferences and interests. The student is expected to be an active participant in the transition planning and services. In order to create and implement this IEP, parents, adult services agencies, the student, and the CSE must jointly consider the total life needs of the student and identify transition services which both support the individual needs of the student in school and after the child leaves school.

2) The IEP must be "outcome oriented." To be effective, an educational program that includes transition services must prepare students for their roles as successful members of adult society. The CSE first must target adult outcomes and goals, and then identify the annual goals, objectives and activities incrementally necessary to reach these goals. Transition planning and services need to look comprehensively at preparing students for adult participation, including in the areas of:

   - recreation and leisure activities
   - legal and advocacy needs
   - financial and income considerations
   - personal skills and residential options
   - medical and health maintenance
   - employment preparation and options
   - post-secondary or continuing education
   - transportation accessibility
   - other support needs (e.g., counseling)

3) There must be "interagency linkages" when appropriate to meet the student's needs. IDEA promotes shared programmatic and financial responsibility for transition services with other agencies, but clearly specifies that the local educational agency has primary responsibility. In cases where a student's transition needs cannot be met by a single agency or service, the development of interagency partnerships is essential to

> ensure a successful transition. The school district's cooperative efforts with adult services providers on issues related to accessing services that are appropriate and responsive to the individual needs of these students will enhance the quality of their adult lives. Cooperation between all parties is the key to effective planning and provision of educational programming that is consistent with subsequent adult programming. Every effort must be made to include the student in the transition planning process.[19]

The State Education Department is responsible for ensuring that each school district in the state meets the requirements for transition services and planning in a timely manner.

## Assistive Technology Devices and Services

In addition to adding transition services, the IDEA added "assistive technology devices" and "assistive technology services" to the array of entitlements for students in the special education system. The term "assistive technology device" is defined as—

> Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. 20 USC §1401(2)(25), 34 CFR §300.5.

The term may include computers and specialized adaptive equipment and programs, desk or chair adaptations, auditory equipment, Braille materials, slant boards, or any other device or equipment that is necessary to provide that child with a free appropriate public education (FAPE).

The term "assistive technology service" is defined as—

> Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes:
> A. the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
> B. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individual with disabilities;

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[19] See Negotiating the Special Education Maze: A Guide for Parents and Teachers, Anderson, Chitwood and Hayden, Woodbine House (1990).

C. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
D. coordination and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
E. training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and
F. training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.
20 USC §1401(a)(26), 34 CFR §300.6.

The need for assistive technology devices and services must be determined on a case-by-case basis at the CSE or CPSE meeting for any child entitled to special education. If the student requires the assistive technology devices or services, these must be specifically detailed on that student's IEP. In addition, if the CSE or CPSE determines that a particular assistive technology device or service is required for home use to enable the child to receive a free, appropriate public education, that technology must be provided and included on the IEP. Training on how to use the assistive device must be provided to parents.

## G. DECLASSIFICATION: LEAVING SPECIAL EDUCTION

At an annual review or triennial evaluation, a child may be determined to be ready to move back into full-time regular education. A parent must agree to declassification and sign a formal consent. At the CPSE or CSE meeting at which a decision is reached to declassify a child, advocates and parents should ensure that full consideration be given to declassification support services.

Declassification support services, such as psychological counseling or social work counseling, are those services designed to assist the student in moving into the regular education setting. The CSE or CPSE should specify the type of services to be offered and the duration of services during the first year the student moves into regular education.

## H. DUE PROCESS FOR DISABLED STUDENTS

Parents of a disabled child, whether in Special Education or entitled to Section 504 protection, may challenge any proposed change in placement or disciplinary action against their child by a district, or a failure to comply with the districts duties under special education laws[20] by requesting that the district conduct an impartial due process hearing. Within 45 days of receiving the request, the district must conduct the hearing and mail to parents the final decision of the hearing officer.

An impartial hearing is a complex administrative remedy and parents are advised to make use of their right to seek legal counsel prior to instituting a request for a hearing. (See Appendix I for resources.) Districts must provide parents with a list of free or low-cost legal services in the area.

In addition to the right to legal (or other related) representation, parties to a due process hearing have the right to:

1. Present evidence, confront, and cross-examine witnesses—and to compel school personnel to serve as witnesses;
2. Prohibit introduction of evidence not disclosed to all parties at least five days prior to the hearing;
3. Obtain a verbatim record of the hearing (written or electronic);
4. Obtain a written copy of the hearing officer's decision, including his or her statement of the facts of the case;
5. Appeal a decision to the State Education Department—and, after exhausting the administrative remedies, seek judicial action.

Parents also have the right to have the child present at the hearing and to open the hearing to the public.

The hearing officer is chosen by the board of education from a list of qualified persons who have completed a State Education Department training program. The hearing officer must be impartial and may not have any affiliation with the school district or any professional or personal interest in the student.

If you choose to request an impartial hearing,
**seek professional assistance immediately.**

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[20] See IDEA, 20 USC §1415; Section 504, 34 CFR §104.36; New York Education Law, 8 NYCRR §§200.5 et seq.

Your child's placement
may **not** be changed
at any time
during the due process proceedings.

Mediation

Parents and advocates should be aware that New York State has established a Special Education Mediation Demonstration Program which is voluntary for all districts in the state. Mediation is an additional due process procedure which **does not in any way affect other due process rights**. It is a process in which a parent and representative of the school district (and any other relevant parties) meet with an independent mediator to attempt to resolve special education disputes without resorting to an impartial hearing. It is free and voluntary for parents. Check with your local district, or with the Office for Special Education Services at the State Education Department to see whether your district has elected to participate in the demonstration program. If you wish further information about the program, contact Student Advocacy to request a "Fact Sheet on Special Education Mediation."

# CHAPTER SEVEN:

# DISCIPLINARY PROCEEDINGS FOR SPECIAL EDUCATION STUDENTS

# Chapter Seven:

## Disciplinary Proceedings for Special Education Students

One of the specific intents of the U.S. Congress in passing the Education of All Handicapped Children Act in 1975 was to prevent schools from excluding handicapped students for misconduct related to the students' handicapping condition. (See 20 U.S.C.A. §1400(b)(4) West Supp. 1992; S.Rep. No.168, 94th Cong., 1st Sess., 8 (1975)). Numerous court cases and studies document the disproportionate exclusion, suspension and expulsion of handicapped students, particularly those with learning disabilities, emotional or behavioral needs. In order to put an end to this practice, Congress, state legislatures and courts have established additional protections for students with handicapping conditions.

Due to the importance of the additional rights and protections provided for students with handicapping conditions in disciplinary exclusions, this chapter details these rights, outlines reccomended actions to be taken, and answers common questions of parents and advocates in handling disciplinary matters. In addition to the rights discussed in this chapter, students with handicapping condition are entitled to all the due process rights of students in regular educaiton. Therefore, this chapter should be read **together with**—not in lieu of—Chapter Four of this manual.

**A. Honig v. Doe: The U.S. Supreme Court Speaks**
**B. Disciplinary Exclusions of Handicapped Children for More than Ten Days**
**C. Suspected Handicapping Condition**
**D. The "Stay Put" Provision**
**E. Emergency Procedures**
**F. Review of Recommended Procedures**
**G. Common Questions and Answers of Parents and Advocates**

## A. Honig v. Doe: The U.S. Supreme Court Speaks

The pivotal case in the area of discipline of handicapped students is Honig V. Doe, decided by the U.S. Supreme Court on January 20, 1988. (484 U.S. 305, 108 S. Ct. 592 (1988).) The primary issue in Honig was whether schools may unilaterally exclude a handicapped child from the classroom for dangerous or disruptive conduct resulting from their handicapping condition. The Court ruled that school officials cannot unilaterally change the placement of children with disabilities and that a disciplinary exclusion in excess of ten days is considered a change in placement. This ruling is referred to as the "stay put" provision; it provides an interpretation of a key provision of the IDEA.

Therefore, schools must follow specific guidelines in disciplinary actions involving handicapped students. Because Section 504, the IDEA and cases interpreting them restrict a school's ability to change the placement of a handicapped student, the question arises: "What is a change of placement?"

A change in placement may mean:

- a change in a child's educational program;
- a change in the setting in which the educational program is provided;
- exclusion of a handicapped child from school by a school official for more than ten days; or
- placement of a handicapped child on home instruction for more than ten days.

A suspension of more than ten (10) days is a change of placement requiring CSE review and the rights to notice of the opportunity to challenge the proposed change of placement and to have the child remain in the current placement pending appeal. ("Stay Put" Provision.)

## B. Disciplinary Exclusions of Handicapped Children for More than Ten Days

A disciplinary exclusion for more than ten days is a change in placement if a child is classified with a handicapping condition by the CSE and the behavior for which the child is suspended is related to his or her handicap. In Honig, the Supreme Court held that because a suspension of more than ten days constitutes a change in placement, a school district is required to follow the procedures and requirements under the IDEA (then known as the Education of All Handicapped Children Act (EAHCA), P.L. 94-142, now the Individuals with Disabilities Education Act (IDEA). 20

U.S.C.A. §1400 et seq.). In addition, the Office of Civil Rights of the U.S. Department of Education has held that a series of shorter suspensions totaling more than ten days is a significant change in placement requiring re-evaluation, if the suspensions create a pattern of exclusions. 34 CFR §100.1 et seq. (1992)

A pupil may not be suspended for more than a total of 10 days while an evaluation is being done.
Children handicapped under §504, but not classified by the CSE, may be protected by Honig if they are to be suspended for "behavior related to their handicapping condition."

### C. Suspected Handicapping Condition

Section 504 protection extends to students suspected of having a handicapping condition. (See Appeal of Ackert, 30 Educ. Dept. Rep. 31 (Sobot, 1990).) Therefore, the student should be referred to the CSE if a handicapping condition is suspected, and if a suspension of more than ten days is recommended by the superintendent or a designee after a fair hearing. If the CSE determines that the present placement is appropriate, the child must remain in the school placement.

In reviewing the case, the CSE should consider the following:

- Whether the current placement is appropriate;
- Whether further evaluation is necessary;
- Whether the behavior resulting in the suspension is related to the handicapping condition;
- Whether modification of the IEP would enable the child to remain in the current educational placement, particularly where a pattern of behavior related to the handicap has been identified. Such modifications might include an increase in related services, an aide, further information on the provision for mainstreaming, or alternative transportation arrangements;
- Whether a change in placement should be recommended.

If the CSE recommends a change in placement, it must follow the change of placement procedures prescribed by New York law under 8 NYCRR §200.5, including detailed written notice to the parent regarding the opportunity to challenge the proposed change of placement by requesting an impartial hearing (see, "Due Process," in Chapter Six of this manual). The notice must also explain that "during the pendency of any proceedings conducted pursuant to this section, unless the commissioner or local board of education and the parents or legal guardian agree, the pupil shall . . . remain in the then current educational placement." 8 NYCRR §200.5(a)(2)(iii).

### D. The "Stay Put" Provision

If the parent challenges the proposed change of placement by requesting an impartial hearing, the child must remain in the current educational placement pending the appeal process unless the parents or legal guardian agree to an interim placement.

There is an exception to the "stay put" provision of the IDEA for dangerous or disruptive students. In Honig, the United States Supreme Court held that the IDEA prohibits school districts from unilaterally excluding "dangerous or disruptive" handicapped pupils from their classrooms during the pendency of any proceeding initiated under the Act unless the parent consents to an interim placement. However, if a school district proves a student is a serious danger to self or others, "emergency" interim procedures may be imposed.

### E. Emergency Procedures

WHAT OPTIONS DOES THE SCHOOL DISTRICT HAVE IN AN "EMERGENCY"?

**"Normal Procedures" Short of Suspension or Change of Placement.** While the pupil's placement may not be changed during the pendency complaint proceeding under the IDEA without the parent's consent, the district may use its normal procedures for dealing with children who are endangering themselves or others. (Comment following Reg. Off. of Spec. Educ. and Rehab. Services, Education, Chapter III; 34 CFR §300.513 (1992)). "Such procedures may include the use of study carrels, timeouts, detention, or the restriction of privileges" that do not modify the current IEP. Honig v. Doe, 484 U.S. 305, 326—28 (1988).

**Ten Day "Cooling Off" Period.** If a student poses an immediate threat to the safety of others, officials may temporarily suspend the student for up to ten (10) school days by holding a fair hearing. As the Supreme Court stated in Honig, "This authority . . . ensures that school administrators can protect the safety of others by promptly removing the most dangerous students, [and] also provides a 'cooling down' period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement." Honig v. Doe, 484 U.S. 305, 326 (1988).

**Court Injunction.** In "those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10 day respite gives school officials an opportunity to invoke the aid of the courts under §1415(e)(3), which empowers courts to grant any appropriate relief." 20 USC §1415(e)(3).

The standard for a court injunction requires the school district to make a showing that maintaining the child's current educational placement is "substantially likely to result in injury either to himself or herself, or to others." Honig v. Doe, 484 U.S. 305, 328 (1988).

These procedures apply to all children classified as handicapped by a CSE—or protected by Section 504—and to all facilities, public and private, that accept handicapped children for placement by local school district CSE's. These procedures also govern residential school programs for children who have been designated handicapped and placed in Child Care Institutions by the Family Court.

## F. Review of Recommended Procedures

### WHAT TO DO IN CASES INVOLVING SUSPENSION OF A HANDICAPPED CHILD

- In a short term suspension, determine whether referral to the CSE is appropriate to modify the IEP
- In a long term suspension, the case should be reviewed by the CSE prior to any removal of the student for more than five (5) days
- Determine whether additional services should be requested from the CSE
- Do not consent to change of placement unless it is appropriate and in the pupil's best interest

### TIPS FOR ADVOCATES IN THE SUSPENSION OF HANDICAPPED CHILDREN

- A handicapped child cannot be excluded from school for more than ten days unless the parent consents to an interim placement or the school district obtains a court injunction, nor can a handicapped child be suspended for short term suspensions totalling more than 10 days which creates a pattern of exclusions without a referral to the CSE.

- If the school authorities seek to exclude a child for more than five days, they must schedule a superintendent's hearing.
- If the school authorities seek to exclude a handicapped pupil from school for more than ten days, the CSE must convene within that period to determine whether a change of placement should be recommended. The parent must be given written notice of the meeting and should attend. An advocate should plan to attend the CSE meeting prepared to address all the issues, or seek the assistance of an attorney. If the CSE determines that the present placement is appropriate, the child will remain in the placement.
- If a change of placement is proposed by the CSE, the child has the right to remain in the current placement until an alternative is available. If the parent does not agree to the proposed change in placement, an impartial hearing may be requested and the child must remain in the current educational placement pending all appeals.

## G. Common Questions and Answers of Parents and Advocates

**Question:** Should a parent consent to an interim placement pending a change of placement?

**Answer:** If the parent consents to an interim placement (i.e., homebound instruction) he or she faces the risk that it may be interpreted as the child's "current" placement pending any proposed change of placement. By consenting to home instruction pending placement, a child could be maintained on home instruction indefinitely while the CSE recommends a change of placement or the parent challenges a proposed change in placement.

If the advocate and the parent agree that it is not in the child's best interest to return to the current placement while the CSE makes arrangements for a new educational placement, it may be advisable to enter into a carefully drafted agreement, giving consent to home instruction (or some other interim placement) as an "emergency measure" to enable the district to provide an appropriate placement within an agreed upon period of time.

It must be very clear that the parent is only giving time-limited consent to enable the CSE to implement an appropriate change of placement and **is not consenting to change the current placement to homebound instruction.** It would not be advisable to agree to such an "emergency measure" for more than thirty (30) school days, which is the time period a CSE has to provide an appropriate educational placement to a handicapped child following a recommendation by the CSE. If the CSE does not provide the placement within the agreed upon time, the right to return to the current educational placement should be protected.

**Question:** What if a school district determines that a handicapped child can be expelled from school because the behavior was not "related" to the child's handicap?

**Answer:** In reaching this conclusion, a school district is applying the Honig decision narrowly to involve only handicapped children whose misconduct is "related" to their handicapping condition. Such an interpretation invites legal challenge. Therefore, in such cases, it is advisable to contact an attorney.

When a district takes this position and seeks to exclude a handicapped student from school for more than ten (10) days, some preliminary steps must be taken **within that ten (10) day period** to make a determination on "relatedness."

1. An independent fact finder would have to determine at a hearing, whether the disruptive behavior actually occurred, and if so, whether the misconduct was serious enough to warrant review by the CSE. (The hearing must be scheduled within five (5) school days and follow the procedures set forth in Chapter Four, page 28.)

2. The CSE must convene to decide the issue of relatedness. The advocate should attend the meeting and be prepared to argue why the behavior is "related" to the child's handicap. In preparation, it is important to review prior evaluations and IEPs and to gather detailed information about the child's current placement. In evaluating the question of relatedness, the pupil's prior disciplinary record should also be obtained and reviewed. These records may provide valuable information in identifying a pattern of behavior not previously addressed in the IEP. The records may also be relevant in evaluating whether the current placement was appropriate at the time the incident occurred. If found inappropriate, then the CSE should recommend a change of placement and provide written notice to the parents of the proposed change of placement and their due process rights.

3. If these procedures have not been completed within ten days, the pupil has the right to return to the current educational placement.

4. If the CSE determines that the behavior is "not related" to the handicap and the pupil faces a long-

term suspension from school, contact an attorney immediately.

A parent could request copies of all school records and evaluations pertaining to a child or sign a consent form allowing direct release of records from the school district to the advocate. The school district must release the records to the parent (although the district may charge a copying fee) or to any person who has obtained parental consent to release the school records. (The Family Educational Rights and Privacy Act, 20 USC §1232g; 45 CFR §99, et seq. (FERPA; Buckley Amendment).)

# APPENDIXES

## Appendix A:

## Characteristics of Learning Disabilities

### A. Visual Disability

The visual channel is one of the major passages for receiving information. Some experts estimate that 80% of all learning takes place through the eyes. Visual disabilities (problems in detecting, perceiving, understanding, and retaining visual information) may be strong contributors to learning problems.

Some observable characteristics of a person with a visual disability are as follows:

- Looks up often when copying from the board
- Avoids close desk work
- Cannot follow written directions, but can follow oral directions
- Limited attention span for visual task
- Frequently forgets something just seen
- Cannot evaluate visual phenomena
- Easily distracted by surrounding activities
- Moves eyes excessively and inappropriately
- Repeats words when reading, confuses words that look alike
- Bumps into objects
- Confuses foreground and background

If the student appears to have a problem in this area it may be useful to:

- allow the student to use auditory cues whenever possible
- review instructions orally with the student.

### B. Auditory Disability

The auditory modality is an important sensory channel which greatly influences school success. The ability to detect, perceive, understand and retain auditory information is required for progress in school. Disabilities in this process will therefore contribute strongly to learning difficulties.

### C. Auditory Reception

This refers specifically to students with an inability to process what is heard.

Observable characteristics of a student with an auditory reception problem are as follows:

- May not be able to discriminate between two sounds
- Is easily distracted by noises; may respond to every noise
- Cannot localize the direction of a sound
- Seems "too attentive" when verbal instructions are given; strains to "see" what is being said
- Understands better at a one-on-one level than at a usual classroom distance
- Cannot distinguish between background noises and teaching sounds
- Does not listen attentively in class
- Gives inappropriate or wrong answers to simple questions

If a student demonstrates any of the above characteristics, follow these guidelines for instruction in classroom:

- use short, one-concept phrases
- ask short questions whenever possible, and provide information in a written form such as charts

### D. Auditory Association

This refers specifically to a student with an inability to relate spoken words in a meaningful way.

Some observable characteristics of a student with an auditory association problem are as follows:

- Cannot hold two or more ideas in mind at one time and has difficulty considering them in relation to each other
- Has difficulty learning to classify or categorize concepts
- Cannot find and/or evaluate alternative solutions to a problem

If a student demonstrates any of the above characteristics, follow these guidelines for classroom instruction:

- Ask one-concept questions, eliciting several short answers
- Accept concrete answers

- Supply abstract cues
- Provide visual cues where possible
- Give ample time for responses
- Give the student the question in writing to think about before having to answer orally

## E. Auditory Memory

This refers to the ability to remember and correctly repeat a sequence of symbols just heard.

Some observable characteristics of students with an auditory memory problem are as follows:

- o Cannot attend to the details of auditory stimuli
- o Cannot remember and repeat things just heard
- o Has difficulty storing and retrieving information
- o Cannot follow directions and often asks for instructions to be repeated

If a student demonstrates any of these characteristics, the following suggestions may be helpful in classroom instruction:

- Permit the student to use visual cues
- During memorization, allow the student to write
- Use short sentences
- Use visual aids

## F. Motor Disability

The psycho-motor domain refers to the student's awareness and knowledge of self in the following areas:

- o Movement
- o Information reception, analysis, and integration
- o Control and evaluation of responses

A lack of development in any of these areas might interfere with a student's progress.

Some observable characteristics of a student with a motor disability are as follows:

- o problems drawing and writing
- o unusual pencil grasp
- o slow to finish written work
- o writes heavily, either very small or very large
- o difficulty organizing paper work
- o no established lateral dominance

## Appendix B:

## Classification System for Special Education Students

| Classification | Definition of the Disability |
|---|---|
| Autistic | Autism is a behavior defined syndrome which may occur in children of all levels of intelligence. There is usually difficulty in responding to people, events and objects. Responses to sensations of light, sound and feeling may be exaggerated; and delayed speech and language skills may be demonstrated. These difficulties are usually observed before 2½ years of age. |
| Emotionally Disturbed | Such students have difficulties in school that cannot be explained by intellectual, sensory, or health factors. Over a long period of time, the student in usually unable to build satisfactory relationships, may be generally unhappy, may develop physical symptoms or have fears associated with his or her school experience, or have inappropriate behaviors or feelings. |
| Learning Disabled | These students have a psychological processing disorder that causes them to have a problem in understanding or using language. A child who is learning disabled has difficulty listening, thinking, speaking, reading, writing, or doing arithmetic. This child is learning at only about half or less than half of the level expected for him or her in that subject or skill area. A learning disability is not primarily due to a physical, mental or emotional disability or to environmental, cult-ural or economic reasons. |
| Mentally Retarded | These students have a general intellectual functioning level that is 1.5 or more standard deviations below the general population. This is determined by a comprehensive evaluation, which must include an individual psychological evaluation. |

| Classification | Definition of the Disability |
|---|---|
| Deaf | A student who is deaf has a loss of hearing so severe that it prevents processing linguistic information through hearing. The severity of this hearing loss usually necessitates the use of specialized training, through an alter-native means of communication or use of speech sounds. |
| Hard of Hearing | A student in this category has a hearing impairment which adversely affects his or her educational performance. The hearing loss may or may not be permanent. He or she may have difficulty following instructions or have difficulty in other areas relating to the hearing loss: they may have problems discriminating speech sounds, or have speech and/or language language difficulties, as well as frequent middle dear infections. |
| Speech Impaired | These students have a communication disorder such as stuttering, an inability to correctly pronounce speech sounds, a language impairment, or a voice disorder. |
| Visually Impaired | Such students may be partially sighted or blind. The visual disability, even with correction, adversely affects their educational performance. |
| Orthopedically Impaired | Students in this classification are physically disabled and have a severe orthopedic impairment which adversely affects their educational performance. The term includes impairments caused by congenital anomalies, impairments caused by disease and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns which cause contracture). |
| Other Health Impaired | Some students have limited strength, vitality, or alertness due to chronic or acute health problems which adversely affect their educational performance. These problems may include a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, Tourette's syndrome, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes. |

| Classification | Definition of the Disability |
|---|---|
| Multiply Handicapped | Some students have two or more disabilities that result in multisensory or motor deficiencies and developmental lags in the cognitive, affective or psychomotor areas. The combination of these disabilities causes educational problems which cannot be met through a special education program designed solely for one of the disabilities. |
| Traumatic Brain Injured | These students have suffered an injury to the brain caused by an external physical force or internal occurrence such as stroke or aneurysm, resulting in total or partial functioning, disability or psychological maladjustment that adversely affects educational performance. |
| Taken from A Parent's Guide to Special Education for Children Ages 5 - 21, State Education Dept., July 1992. | |

# Appendix C:

## Assessment Techniques

During past decades, issues about identification of handicapped children have changed frequently. At one time specific and exacting characterizations of various conditions have been the vogue, while in another era loose classification systems which focus on treatment needs have been encouraged. Signs of the early eighties suggest a movement toward limited "delabeling" with only enough umbrella structuring to meet state and federal laws.

Much has been written on the identification of handicapping conditions and while this narrative makes no claim to a time honored, professionally accepted position, it is presented to help impartial hearing officers develop a working perspective of the problems of evaluation, and classification of certain "law defined" diagnostic categories.

The process of evaluation requires that a knowledgeable and skilled professional attain a comprehensive understanding of how a child is functioning in a given time and place. Since the evaluation and identification process involves human interaction, different evaluators may perceive different reOsults. With proper training and the use of appropriate and accepted assessment practices, this variation my be limited.

In most disability areas, there had been a voiced concern about diagnostic labeling and classification. It must be understood that there will always be some question about the criteria used for classification of handicaps. Of particular concern has been the utilization of standardized measures of ability, aptitude, achievement, and personality characteristics. Clearly, no numerical classification system can be totally accepted and all handicapping conditions can only be arrived at through the use of clinical impression of such numerical data. Tests are not the only viable methods of assessment but do add relevant information to assist in the classification of and service to a handicapped child.

Under §3602.19 of New York State Education Law, a number of categories are listed for pupils with handicapping conditions. These are defined in 8 NYCRR §200.1(dd) as:

1. Autistic
2. Emotionally Disturbed
3. Learning Disabled
4. Mentally Retarded
5. Deaf
6. Traumatic Brain Injury
7. Hearing Impaired
8. Speech Impaired
9. Visually Impaired
10. Orthopedically Impaired
11. Other Health Impaired
12. Multiply Handicapped

Children who have more than one condition which requires special assistance or treatment are classified as Multiply Handicapped.

It is this set of diagnostic classifications, along with their several sub-parts, which the Committee on Special Education will encounter during the course of their deliberations. It is imperative that the CE members are thoroughly familiar with these regulatory classifications, their legal definitions, and how classifications are determined.

Regulations require a psychological evaluation as pa part of the initial comprehensive evaluation of all handicapped children. Great care must be exercised in the interpretation of the results of these psychological evaluations, which must be carried out by competently trained individuals, especially when the reports are used as evidence. The IHO must further ensure that the interpretations rendered from psychological evaluations are valid and not presented to prejudice the results of the hearing.

The diagnosis of handicapping conditions is the result of the efforts of an interdisciplinary team including specialist in the areas of medicine, psychology and education. Data for the diagnosis must be generated from a variety of sources in-cluding case history, clinical observation, interview, and both formal and informal testing.

## I.Q. Tests

An individually administered intelligence test is conventionally included as part of the initial psychological evaluation.

The **Weschler Preschool and Primary Scale of Intelligence (WPPSI)** is frequently used for children between the ages of 4 and 6½, while the **Weschler Intelligence Scale for Children, 3d Edition (WISC-III)** is appropriate for those six through sixteen. Wechsler states that both instruments consist of a battery of subtests which individually may be considered to ensure different ability and when combined yield a measure of overall or global intellectual capacity. He defines intelligence as the overall capacity of an individual to understand and copy with the world around him. Wechsler adds that five test yield a Verbal and five a Performance IQ, and that such a dichotomy has proven diagnostically useful.

WISC-III Verbal subtests are: Information, Similarities, Arithmetic, Vocabulary, Comprehension, and Digit Span (supplementary.) Those in the Performance group are: Picture Completion, Picture Arrangement, Block Design, Object Assembly, and Symbol Search (Mazes as a supplement.) The supplementary tests may yield qualitative and diagnostically useful information even when not used in computation of the I.Q.

The **Stanford-Binet** IQ test, is another test often used in the diagnosis of mental retardation. The Stanford-Binet is not composed of subtests, but does enable the examiner to observe the work methods and approaches of the person being tested, as well as other qualitative aspects of his performance.

The **Leiter International Performance Scale (Arthur Adaptation)** is a performance IQ test for students ages 2 to 18. Its tasks require perceptual matching, analogies, memory and other varied items, many of them similar to verbal tests. The test is given with very simple directions (spoken or pantomime), and the items themselves require no language. The test is most often used for the intellectual assessment of children who have difficulty responding verbally. Limited standardization data has been cited as a concern and caution should be used accepting determinations from even the most experienced testers

The **McCarthy Scales of Children's Abilities** were designed to evaluate the general intellectual level as well as the strengths and weaknesses of children between the ages of 3 years and 8 years. The test includes 18 subtests which make up 6 scales including verbal, perceptual performance, quantitative, memory, motor and general cognitive. The general cognitive score is a composite of the verbal, perceptual performance and quantitative scales. Interrelationships among the 18 subtests and the 6 scales identify relative strengths and weaknesses. The test can yield a variety of scores including a general cognitive index which is a called score and not a quotient. This score has a mean of 100 and a standard deviation of 16.

The diagnosis of mental retardation is partially based on an IQ score falling below a designated reference point. Using the definition of mental retardation cited in Commissioner's Regulation: A mentally retarded pupil must fall at least 1.5 standard deviations below the general population on a standardized test of intellectual ability. In addition to low intellectual function, a mentally retarded pupil has concurrent deficits in adaptive behavior.

The **Vineland Social Maturity Scale (VSMS)** appears to be the most widely known and used instrument for the assessment of social competency or adaptive behavior. the scale is administered by an interview procedure, in which an interviewer asks questions of a third party who is very familiar with the person being assessed. The VSMS rates 117 behaviors which are clustered in 8 areas including Self Help--General, Eating and Dressing, Locomotion, Occupation, Communication, Self Direction and Social Direction. It is necessary to determine if the subject of the interview habitually and customarily performs the task. The results may be expressed in a social age which can be used like any other age score or social quotient.

## Learning Disability

Most definitions of a learning disability focus on a discrepancy between what a child has learned as measured by achievement tests, and his capacity to learn as indicated by results of intelligence test. Classification is generally aided by diagnostic testing aimed as specification of the learning difficulties. Attempts to develop a description of a learning disability have frequently resulted in definition by systematic exclusions. It is rather clear that a learning disability is not a special clinical entity but a syndrome involving ability and achievement discrepancy due to factors other than clear cut medical, emotional, mental or environmental ones.

Diagnosis of a learning disability is a preliminary to formulating an educational program for the child, and should be substantiated by objective measures and clinical observations. It is a classification applicable to children at any age, grade or ability level where actual performance in defined academic or skill areas falls significantly below the level one would expect based on ability and age.

Although group intelligence tests such as the **Otis-Lennon** may be used as an aid in diagnosing the existence of a learning disability, an individually administered test is required. In addition to yielding a global score to be used in determining a discrepancy, the Wechsler tests yield diagnostically useful information through analysis of intersubtest scatter. Certain score patterns may be indicative of specific learning difficulties, and indicate the advisability of additional testing with other instruments.

## Achievement Tests

Some achievement tests are designed to be administered to large groups of students.

The **Stanford Achievement Test** is a norm referenced teacher administered test. It contains five levels covering grades 1-9 in the following areas: word meaning, paragraph meaning, vocabulary, spelling, work study skills, math areas as well as social studies and science.

The **Metropolitan Achievement Test (MAT)** comes in norm or criterion referenced versions that may be administered by a teacher to an individual or group. Scoring reflects raw scores, stanines, and percentile rank in grades K.0 - K.5; K.5 - 1.4; 1.5 - 2.4; 2.5 - 3.4; 3.5 - 4.9; 5.0 - 6.9; 7.0 - 9.9; 10.0 - 12.9.

The **Stanford Diagnostic Math Test (SDMT)** is another instrument that lends itself to either group or individual administration. It is designed to assess competence in basic concepts and skills, and to provide a basis for determining the special area (s) of mathematics in which the child is experiencing difficulty. The SDRT assesses the major components of the reading process, its primary purpose being the diagnosis of strengths and weaknesses. These two test differ from the general achievement tests discussed previously in their more detailed coverage of skills and concepts, and their incorporation of questions focused on the progress of the low achiever.

The **California Achievement Test (CAT)** is teacher administered and covers grades 1.5 - 2.5; 2.5 - 4.5; 4 - 6; 6 - 9; and 9 - 12; in the areas of reading, math and language. There is a concern that the CAT may be biased when used with non-standard-English-speaking students.

Individually administered achievement tests yield valuable data in the attempt to understand the strengths and weaknesses in a student's functioning.  This is necessary in order to define the handicapping condition.  Achievement tests can provides a means of adapting instruction to individual needs, assisting in remediation, and improving teaching of a number of academic skill areas across grade levels. The following is a summary of some of the more commonly used individually administered achievement tests:

The **Woodcock Johnson Psychological Educational Battery** is an individually administered multiple skill battery designed to assess cognitive ability, scholastic aptitude and academic achievement for individuals from the age of 3 years to 80 years of age. The complete battery includes 27 subtests which may be used in different combinations to accommodate different age ranges, diagnose strengths and weaknesses and evaluate change in performance. The 12 cognitive subtest include picture vocabulary, auditory memory and recall, spatial relations, visual matching and learning, auditory blending, quantitative concepts, concept formation, analogy, analysis-synthesis and antonym-synonyms. The 10 achievement subtests address reading, arithmetic, writing, science, social students and humanities.

The **Peabody Individual Achievement Test (PIAT)** is individually administered. It is a wide-range screening measure in the areas of mathematics, reading, spelling and general information. The PIAT can be administered by professional persons in a variety of settings to screen for the general level of school achievement and to assist an examiner in selecting appropriate diagnostic instruments for further investigation.

The **Wide Range Achievement Test** identifies problems in the areas of reading, spelling and math. This is a quick screening teacher administered test which can be used to determine instructional levels and academic groupings with school age subjects.

The **Kaufman Assessment Battery for Children (K-ABC)** is one of the new diagnostic systems designed for the evaluation of pupils thought to be handicapped. The K-ABC assesses intelligence and achievement of 2½ to 12½ year old children. The intelligence scales are derived from theories of mental processing which consider differential functions of the hemispheres of the brain. Following these theories, 3 sequential subtests and 7 simultaneous subtests are included in the mental processing composite score which is comparable to an IQ score. The 6 achievement subtest include expansive language, reading skills, arithmetic concepts and computation, verbal inferences and oral visual recognition.

When taking the **Gray Oral Reading Test**, a child is asked to read aloud a series of graded passages as a measure of the pupil's fluency and accuracy in oral reading. While the child is reading each paragraph, the examiner notes word attack skills (quickly, fluently, with expression or slowly, choppily in a word by word manner). Comprehension questions follow each paragraph and assess the child's knowledge of story line and important detail.

The **Woodcock Reading Mastery Test** consists of five subtests which measure reading skills. Included are subtests which measure the child's ability to identify words and letters, apply phonic analysis skills, understand word meanings and form analogies, as well as comprehend a complete passage.

The teacher administered test allows raw scores to be converted to grade, age and standard scores as well as percentile rank.

The **Gates MacGinitie Reading Tests** are a series designed to measure group and individual reading achievement for kindergarten through grade twelve. The teacher can administer these individual or group examinations to provide and objective measure of how rapidly a child can read with understanding and how well he can recognize and analyze isolated words.

The **Key Math Diagnostic Arithmetic Test** is a comprehensive assessment tool that breaks down mathematics into fourteen sub areas and measures the child's strengths and weaknesses within each. It is administered individually by the teacher and reveal information on total test, specific area and subtest performance, as well as outcomes on all items.

The **Peabody Picture Vocabulary Test (PPVT)** is an untimed test, administered in 15 minutes or less, which provides a measure of word knowledge and receptive vocabulary. Total score can be converted to percentile rank, M.A. or standard score deviation IQ by the teacher or professional administering the test.

The **Carrow Test for Auditory Comprehension of Language** measures the child's auditory comprehension abilities and determines specific areas of language difficulty for program planning and remediation. This is an individually administered device which uses 101 plates, each with three drawings. The vocabulary items are listed separately and are later used in language structure items so that the examiner can determine whether an error is semantics or structure. The test is available as a screening test in English or Spanish.

## Perceptual Skills

Frequently, testing to determine learning difficulties assess auditory and/or visual perceptual skills. The **Wepman Test** investigates auditory perception, the ability to recognize and interpret what is heard, and discrimination, the ability to recognize a difference between phoneme sounds and identify words that are the same and words that are different. Auditory sequencing, the ability to recall the order of items presented orally and sequentially, can be assessed through the **ITPA**, **WISC-III**, or the **DETROIT**. Subtests from the ITPA may be used to measure auditory blending, the ability to blend phonic elements and phonemes into a complete word. Auditory subskills can be investigated through clinical observations and informal and formal standardized tests.

Several tests, most notably the **Bender-Gestalt** and the **Beery Buktenica Developmental Test of Visual-Motor Integration (VMI)**, are used to investigate perceptual motor skills. The **Koppitz** scoring system of the Bender can be used with children aged 5 - 10, while the VMI is for those ages 2 - 15. Both tests present a series of geometric designs to be copied by the child. The VMI was devised as a measure of the degree to which visual perception and motor behavior are integrated in young children. Scoring provides an age equivalent of skill in this area of development.The Bender test is sometimes used to investigate organic disorders or neurological impairment.

Further tests of visual perception are provided by Frostig, and subtest scored of the ITPA, Detroit, and WISC-III. In all cases, clinical observation is a valuable concomitant of the assessment process and is expressed in the form of a deviance from age level expectations.

The **ITPA** was designed to analyze the subskills of psycholinguistic functioning of students grades 2 - 10, and is used to measure certain auditory and visual abilities. Given by a trained professional, the ITPA yields an age score and a scaled score in each of twelve areas tested as well as providing suggested remediation strategies.

The **Detroit Test** is used with children from preschool through high school. It is composed of nineteen subtests which yield a general mental age as well as a series of subtest mental ages. Score on the subtest provide patterns thought suitable for diagnostic interpretation.

## Emotional Disturbance

The diagnosis of emotional disturbance is based in part on psychological assessment tools, data derived from clinical observation,interviews and case histories providing diagnostically relevant information. During testing the examiner pays close attention to factors such as discrepancies and re-sponses, behavior or reactions to the demands of the testing situation itself. The examiner further bases clinical impressions on type of subtest scatter, behavioral characteristics, and known clinical phenomenon.

Projective tests are diagnostic instruments used by the examiner to help determine the classification of emotional disturbance. Such techniques present a comparatively unstructured test, in which the examinee "structures" the situation and reflects fundamental aspects of his psychological functioning.

The **Rorschach** is one such test. It includes ten cards on each of which is printed a bilaterally symmetrical inkblot. The examinee is instructed to tell what he sees, or what a blot represents. The examiner makes observational notes and asks questions regarding parts and aspects of each blot to which associations were made. Several scoring systems are available, with most common categories including location, determinants, and content. Generally, primary emphasis is placed on "global" descriptions of the individual in which information gained form other sources (e.g. tests, interviews, case history) is also integrated.

The **Thematic Apperception Test** is another projective test. It is composed of cards with pictures of human situation printed on them. The examinee makes up a story for each picture, telling what led up to the event shown, describing what is currently happening, feelings and thoughts of the characters, and outcome. Interpretation of responses is generally based on content analysis with many clinicians also employing "subjective impressions" built up through their own experience with the test.

When using **Human Figure Drawings**, a trained professional will instruct a child to draw one or more figures of the same or opposite sex. Interpretation is achieved through an analysis of the figure drawings, relationships inferred and information derived from dialogue about the drawing.

The **Draw A Person (DAP)** is a similar test for subjects 5 and over. It contains a catalogue of 5 distinct categories and suggested interpretative hypotheses. The indicators reference clinical interpretation, clinical conditions or reference features which are considered diagnostic. There is a variety of negative reaction to the DAP. Experienced administrators are necessary.

A diagnosis of emotional disturbance should not be made on the basis of test results alone, but must consider in addition information gained from the case history, clinical observation and interviews, and behavioral responses of the individual in a variety of situations.

The result of individually administered intelligence tests, while designed to measure intelligence, can be supportive in description of the emotional status of a child. Of particular focus here would be types of responses that are unusual, bizarre, or out of context. An unusual fluctuation of subtest scores, a strange pattern of missing easy items and passing very hard ones and repetitive or perseverative responses, all give clinical support to the differential diagnosis of emotional disturbance.

## Appendix D:

## Glossary of Information Processing Behaviors

The following terms describe areas which may present difficulty to children with a learning disability. A learning disabled child may have a weakness in one or many areas depending upon the complexity of the disability.

### MOTOR

**Body-Spatial Organization (Gross-Motor Movement):** The ability to move one's body in an integrated way around and through objects in the spatial environment.

**Balance & Rhythm (Gross-Motor Movement):** The ability to maintain gross and fine balance and to move rhythmically.

**Body Localization:** The ability to locate body parts.

**Directionality:** The ability to project in all direct-tion from the body into space: right, left, up, down, forward, and backward.

**Laterality:** The complete motor awareness of the two sides of the body based on an internal awareness of left as different from right.

### PERCEPTION

**Auditory Acuity:** The ability to receive auditory input.

**Auditory Localization:** The ability to locate the source of sound and among sounds that vary in pitch and intensity.

**Auditory Discrimination:** The ability to hear differences between and among sounds that vary in pitch and intensity.

**Auditory Decoding:** The ability to derive meaning from verbally presented material.

**Auditory Memory:** The ability to retain those stimuli and pieces of information related to sound patterns.
**Auditory Sequential Memory:** The ability to remember and correctly repeat a sequence.

**Auditory-Vocal Association**: The ability to relate to the spoken word in a meaningful way.

**Visual Acuity**: The ability to receive visual input.

**Visual Discrimination Association**: The ability to see differences between and among visual stimuli that vary in shape, size and color.

**Visual Figure Ground**: The ability to perceive objects in foreground and background, and to separate them meaningfully.

**Visual Memory**: The ability to accurately recall prior stimuli.

**Visual Sequential Memory**: The ability to accurately recall a sequence of visual stimuli.

## INTEGRATED FUNCTIONS

**Visual Motor, Fine Muscle Coordination**: The ability to coordinate the fine muscles required in eye-hand tasks.

**Auditory-Motor Coordination**: The ability to respond motorically to an auditory stimulus.

**Auditory-Language-Motor Coordination**: The ability to respond motorically to a verbal command.

## LANGUAGE

**Receptive Language**: The ability to understand words.

**Expressive Language**: The ability to use words.

**Receptive Reasoning**: (a.) The ability to recognize class identities and to use them in establishing logical relationships (conceptual functioning--no verbal output); (b.) the ability to analyze, synthesize, "reason through" and evaluate data (no verbal output); (c.) the ability to solve problem tasks non-verbally.

**Expressive Reasoning**: Same as above, but with a verbal output.

## Appendix E:

## Glossary of Testing Terms

**Achievement Tests**: Measure how much students have learned in a subject such as reading, math, spelling. (Standardized Achievement Tests measure how much students have learned about a subject ion comparison to other students.)

**Aptitude Tests**: Designed to measure a student's ability to learn in school. They do not measure subjects taught in school such as reading and math. They measure a broad range of abilities or skills that are considered to be important for success in school subjects.

**Average**: The sum of a group of numbers divided by the amount of the numbers in the group.

**Battery of Tests**: A group of tests that usually sample student learning in several areas. The results are often presented in the form of a profile.

**CAT (California Achievement Test)**: The standardized reading test published by McGraw-Hill, now the citywide reading test.

**Chapter 53 Screening**: A "quick" assessment required by state law of all new entrants to school, and for students who fall below a certain cut-off point on the PEP test. The screening is supposed to identify students who may be gifted or have handicapping conditions. Screening should determine if any additional, in-depth evaluation is needed.

**Criterion-Reference Test**: An achievement test designed to measure specific skills within a subject area. Test results indicate which skills a student has or has not learned. Criterion-referenced tests are sometimes called **"diagnostic tests"** because they help show the teacher what skills within a subject a student still needs to learn. These tests generally are not considered standardized tests because they do not compare a students performance to a norm group.

**DRP (Degrees of Reading Power)**: A new type of reading test. It is designed to measure a student's ability to process and understand nonfiction prose passages written at increasing levels of difficulty. Test results can be used: to evaluate the current level of student achievement; to determine the most difficult prose text a student can use for instruction and in independent reading; to measure growth in the ability to read with comprehension; and to indicate the extent of remedial help needed, if any.

**Equivalency Test**: Designed for the granting of academic credit or a diploma to students who have not completed formal training in the subject(s).

**Grade Equivalent Score**: A two-digit number used to report achievement test results. The first digit stands for the grade in school, the second represents the month of the school year. The score really compares a child's performance to a norm. It indicates whether the child's achievement is above, below or the same (grade level) as the average student in his/her grade.

**LAB (Language Assessment Battery)**: A group of tests that measure English language proficiency. Results determine who is eligible for bilingual education.

**Median**: The score that separates the top half of the scores from the bottom half when test scores are arranged according to the frequency of their distribution.

**Objective Test**: Made up of items for which correct, or best, responses have been determined in advance ("**multiple choice**"). Therefore, raw scores are unaffected by the opinions or judgments of the persons who score the test.

**PCT (Preliminary Competency Test)**: In reading and writing, given to all 8th grades and some 9th grades to identify students who need remediation. It is part of the state's competency testing program.

**PEP (Pupil Evaluation Program)**: Tests in reading and math, required by the State Education Department. They are given to 3rd and 6th graders to identify students who need remediation.

**Percentile Rank Score**: Shows where a student's test performance placed or ranked in relation to the performance of other students who took the test. It tells what percent of the students in the norm group did better and what percent did not do as well. A percentile rank score of 70 means that the student scored as well as or better than 70 percent of all children who took the test. It also means that 30 percent of the children who took the test scored as well or better than this student. It does not mean that the student answered 70 percent questions correctly.

**Prescriptive Test**: A **criterion-referenced** test where scores are accompanied by specific recommendations about what the students need to work on to improve his or her skills.

**PSAT/NMSQT (Preliminary Scholastic Aptitude Test/National Merit Scholarship Qualifying Test)**: A test for high school juniors administered by the College Entrance Examination Board. It provides an early measure of verbal and math abilities and helps students qualify for National Merit Scholarships.

**PSEN (Pupils with Special Educational Needs) TESTS**: Identify students who need remediation in reading and math. Extra state funding is provided for remediation.

**Raw Score**: The basic score that describes a student's test performance. It usually is the exact number of questions that the child answered correctly.

**RCT (Regents Competency Test)**: Given in reading, writing and math to high school students. They must pass the tests (or Regents exams in English and Math) to get a high school diploma in New York State.

**Regents Examinations**: Measure student achievement in various subject areas like English, social studies, French.

**SAT (Scholastic Aptitude Test)**: Designed to measure verbal and mathematical reasoning ability -- abilities considered important for academic performance in college. It is administered by the College Entrance Examination Board and is required by most colleges and universities for admission. It is a multiple choice test with five 30-minute sections plus a 30-minute test of standard written English. It is given several times a year and any high school junior or senior may register, pay a fee and take the exam.

**Standard Error of Measurement (SEM)**: An estimate of how much an individual student's score can vary.

**Standardized Tests**: Give information about how students in a given class, school or school system are doing in relation to other students. Each student's performance is measured according to the same standards and everyone takes the test according to the same results.

**Stanines**: Groups used to report and to compare student performance on a standardized test. All reported scores are divided into 9 groups called stanines. Stanines 1 - 3 are below average, 4 - 6 are average and 7 - 9 are above average.

## Apppendix F:

## Frequently Used Acronyms[1]

| | |
|---|---|
| ADL | Activities of Daily Living |
| BOCES | Board of Cooperative Educational Services |
| BOE | Board of Education |
| CSE | Committee on Special Education |
| CP | Cerebral Palsy |
| DSS | Department of Social Services |
| ECDC | Early Childhood Direction Centers |
| EH | Emotionally Handicapped |
| FAPE | Free Appropriate Public Education |
| GED | General Education Diploma |
| H/H | Home/Hospital Instruction |
| §504 | Rehabilitation Act of 1983 (Public Law 93-1121, Section 504) |
| IEP | Individualized Education Program |
| IQ | Intelligence Quotient |
| LD | Learning Disabled |
| LEA | Local Education Agency |
| LRE | Least Restrictive Environment |
| MR | Mentally Retarded |
| OECHC | Office for Education of Children with Handicapping Conditions (State Education Dep't) |
| OMH | Office of Mental Health |
| OMRDD | Office of Mental Retardation and Developmental Disabilities |
| OT | Occupational Therapist/ Occupational Therapy |
| OVR | Office of Vocational Rehabilitation |
| P.L. 94-142 | The Education of All Handicapped Children Act (EAHCA); now: Individuals with Disabilities Education Act (IDEA), |
| P.L. 98-199 | 1983 Amendments of P.L. 94-142 |
| PSEN | Pupils with Special Educational Needs |
| PT | Physical Therapist/Physical Therapy |
| RT | Recreational Therapist |
| SED | State Education Department |
| SETRC | Special Education Training and Resource Center |
| SSI | Supplemental Security Income |
| ERSS | Educationally Related Support Services |

**Juvenile Justice**

| | |
|---|---|
| JD | Juvenile Delinquent (ages 7-16) |
| PINS | Person in Need of Supervision (ages 7-16) |
| JO | Juvenile Offender (ages 13-16) |
| YO | Youthful Offender (ages 16-18) |

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[1] Taken from A Parent's Guide to Special Education, New York State Department of Education.

## Appendix G:

## Bibliography of Recommended Reading

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Brutten, Milton; Richardson, Sylvia; and Mangel, Charles. Something's Wrong With My Child. San Diego, New York, London: Harcourt Brace Jovanovich, 1979.

Learning Disabilities and the Juvenile Justice System: What Lawyers Should Know. Washington: American Bar Association, National Legal Resource Center for Child Advocacy and Protection 1983.

Levinson, Harold N., Smart But Feeling Dumb. New York, New York: Warner Books, Inc., 1984.

Rights and Responsibilities of Young People in New York: A Legal Guide for Human Service Providers. New York, New York: Center for Public Advocacy Research, 1986.

Special Education Advocacy for the Maltreated Child. Washington, American Bar Association, National Legal Resource Center for Child Advocacy and Protection, 1979.

Underleider, Dorothy. Reading, Writing, and Rage. Rolling Hills Estates, California: Jalmar Press, 1985.

## Appendix H:

## Information Checklist[2]

**SINGLE COPIES** of the items which are listed on this checklist are available at no cost from the Office for Education of Children with Handicapping conditions. To receive a copy of any of the items listed below, list the items which you would like to receive, include your name and address, and send to:

**New York State Education Department**
**Division of Program Development**
**Room 1071, Education Building**
**Albany, NY 12234**

### New York State Laws and Regulations

☑ **Article 89 of the Education Law (revised October, 1987)**

This section of the State Education Law specifies the educational responsibilities of local school districts and the State Education Department to education children with handicapping conditions. It includes Chapter 853 of the Laws of 1976, Chapter 470 of the Laws of 1977 and subsequent revisions and additions.

☑ **Article 81 of the Education Law (revised October, 1986)**

The state law governing the education of children re-siding in child care institutions including those with handicapping conditions as well as those without.

☑ **Section 112 of the Education Law (revised June, 1980)**

This section requires the State Education Department to set standards of instruction and personnel qualifications for teachers of children in the residential care of any State department or agency or political subdivision.

☑ **Chapter 462 of the Laws of 1984**

Provides for planning and referral services for handicapped students reaching age 21 who are in nonresidential placements but are receiving special education services one hundred percent of the day.

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[2] Material taken from A Parent's Guide to Special Education.

☑ **Chapter 570 of the Law of 1983**

Provides for planning and referral services for handicapped pupils reaching age 21 who are in residential in-state placements and will no longer be eligible for educational funding.

☑ **Chapter 544 of the Laws of 1982**

Provides for planning and referral services for handicapped pupils reaching age 21 who are in residential out-of-state placements and will no longer by eligible for educational funding.

☑ **Chapter 82 of the laws of 1985**

Clarifies the student's own right to consent to the release of information for planning aging-out service, if he or she is eighteen or older.

☑ **Part 116 of the Rules and Regulations of the Commissioner of Education (revised February,1987)**

These regulations establish educational programs and services for children in full-tim residential care in homes or facilities operated or supervised by a State department or agency or political subdivision pursuant to Section 112.

☑ **Part 117 of the Rules and Regulations of the Commissioner of Education (as amended 1987)**

Establishes standards for diagnostic screening of new entrants to the schools and those falling below State reference points on certain exams.

☑ **Part 200 of the Rules and Regulations of the Commissioner of Education**

The state regulations for the education of children with handicapping conditions, effective August, 1993.

## Federal Laws and Regulations

☑ **Individuals with Disabilities Education Act of 1990, 20 United States Code §§1401-1461, (as amended by P.L. 94-142, P.L. 98-199, P.L. 99-372, and P.L.99-457)**

Federal laws governing special education.

☑ **Assistance to States for Education of Handicapped Children, 34 Code of Federal Regulations Part 300**

The August 23, 1977 Federal Regulations which establish procedures to implement P.L.94-142 at the state and local level, as renumbered and amended.

☑ **Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (as amended and renumbered)**

Nondiscrimination under Federal grants and programs.

☑ **Nondiscrimination on the Basis of Handicap, 34 C.F.R. Part 104**

Final Regulations on §504 of the Rehabilitation Act of 1973, as published in the Federal Register, May 4, 1977.

☑ **Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g**

Also called the Buckley Amendment.

## Publications

☑ **A Parents Guide to Special Education: Your Child's Educational Rights in New York (revised 1987)**

This manual is written for the parents of children who require special education. It explains the financial and educational responsibilities of the State and local educational agencies to these children.

☑ **A Guidebook for Committees on Special Education in New York State (1987)**

A manual to assist CSE members in meeting regulatory responsibilities, includes management strategies.

☑ **The Triennial Evaluation of Students with Handicapping Conditions (1985)**

A manual designed to assist those professionals responsible for conducting triennial evaluations.

☑ **Alternative Testing Techniques for Students with Handicapping Conditions (1986)**

A manual designed to assist hose professionals responsible for conducting triennial evaluations.

☑ **Serving the Speech Impaired Child in New York State (1982)**

Guidelines for identifying and serving children with speech impairments.

☑ **Aging Out: The School District's Role in the Transition from School to Adult Services (1987)**

A handbook describing school and adult service provider's responsibilities in planning postsecondary services for children with severe handicapping conditions.

## Brochures and Other Available Materials

☑ **Information and Training on the Education of Students with Handicapping Conditions**

A description of the services available through the Division of Program Development and the New York State Training Network including the addresses and telephone numbers for the Special Education Training and Resource Centers (SETRC)

☑ **New York State Early Childhood Direction Centers**

A listing of the 14 Direction Center addresses and telephone numbers with questions and answers on linking preschool children with handicapping conditions with services.

☑ **Map of OECHC Regional Offices**

Shows the location of the Regional Offices and the areas they serve. It includes addresses and telephone numbers.

☑ **Newsbriefs**

Published during the school year, the Office for Educa-tion of Children with Handicapping Conditions news-letter contains information about changes in State and Federal legislation and policy which affect the serv-ices provided for pupils who require special education, and reports on activities of the Office.

☑ **A Parent's Guide to Special Education, July 1992**

A pamphlet written in simple terms to inform parents of the rights of their children with handicapping conditions.

☑ **Translations of the above pamphlets**:

○ Arabic ○ Greek ○ Chinese ○ Russian
○ French ○ Spanish ○ Creole
▸ Other languages may become available—call the State Education Department at (518) 474-5548

# Appendix I:
# List of Professional Resources

**Federal Office of Civil Rights (OCR)**
Charles Masterson
26 Federal Plaza
Room 33-108
New York, NY 10278
(212) 264-6618
(212) 264-5197

**N.Y.S. Education Department**
Attorney of the Day
9:00 to 1:00 each day
(518) 486-3605

**N.Y.S. Education Department Special Education**
Tom Neveldine
State Education Department
Education of Children with Handicapping Conditions
Education Bldg., Annex
Room 1073
Albany, NY 12234-0001
(518) 474-5548

**Special Education Training Resource Center (SETRC)**
N.Y.S. Education Department
Office for Special Education Services
Division for Program Development and Support Services
Albany, NY 12234
(518) 474-8917

**Programs for Children with Disabilities:**
**Ages 3 Through 5**
State Education Department
Education of Children with Handicapping Conditions
Education Bldg., Annex
Room 1073
Albany, NY 12234-0001
(518) 474-8917

**Programs for Infants and Toddlers with Disabilities:**
**Ages Birth Through 2**
Frank Zollo, Director
Early Intervention Program
Bureau of Child and Adolescent Health
Corning Tower, Room 208
Albany, NY 12237
(518) 473-7016

**N.Y.S. Early Childhood Direction Center**
Coordinating Office
Room 1607
One Commerce Plaza
Albany, NY 12234
(518) 473-4823

**State Vocational Rehabilitation Agency**
Larry Gloeckler
Deputy Commissioner
Office of Vocational and Educational Services for Individuals with Disabilities
Department of Education
One Commerce Plaza
16th Floor
Albany, NY 12234
(518) 474-2714

**State Coordinator of Vocational Education for Students with Disabilities**
Mary Ellen Colella Associate
State Education Department
Division of Occupational Education
Bureau of Home Economics and Technology
Education Programs
One Commerce Plaza, Rm 1619
Albany, NY 12234
(518) 474-4403

**State Mental Health Agency**
Richard Surles, Commissioner
Office of Mental Health
44 Holland Avenue
Albany, NY 12229
(518) 474-4403

**State Mental Health Representative for Children and Youth**
Gloria Newton-Logsdon
Associate Commissioner
Bureau of Children and Families
Office of Mental Health
44 Holland Avenue
Albany, NY 12229
(518) 473-6902

**State Mental Retardation Program**
Elin Howe, Commissioner
NYS Office of MR and DD
44 Holland Avenue
Albany, NY 12229
(518) 473-1997

**State Developmental Disabilities Planning Council**
Isabel Mills, Director
NYS DD Planning Council
155 Washington Avenue
2nd Floor
Albany, NY 12210
(518) 432-8233

**Protection and Advocacy Agency**
Marcel Chaine
Director, Advocacy Bureau
NY Commission on Quality of Care for the Mentally Disabled
99 Washington Avenue
Suite 1002
Albany, NY 12210
(518) 473-7378

**Client Assistance Program**
Michael Peluso
CAP Director
NY Comm. on Quality of Care for the Mentally Disabled
99 Washington Avenue
Suite 1002
Albany, NY 12210
(518) 473-7378

**Programs for Children with Special Health Care Needs**
Michael D. Cohen, Director
Bureau of Child and Adolescent Health
Department of Health
Tower Building, Room 208
Albany, NY 12237-0618
(518) 474-2084

**State Agency for the Visually Impaired**
John L. Ryan, Director
Comm. for the Blind and Visually Handicapped
Dept. of Social Services
40 North Pearl Street
Albany, NY 12243
(518) 473-1801

**State Education Agency Rural Representative**
Suzanne Spear
Department of Educaton
Bureau of School District Reorganization
Education Building
Room 501, West Wing
Albany, NY 12234
(518) 474-3936

## DISABILITY AGENCIES

**Attention Deficit Disorder**
Children with Attention Deficit Disorder (CHADD)
National Office
499 Northwest 70th Ave
Suite 308
Plantation, FL 33317
(305) 587-3700

**Cerebral Palsy**
Michael Parker, Executive Director
UCP of New York State
330 West 34th Street
New York, NY 10001
(212) 947-5770

**Disablities**
National Information Center for Children and
Youth with Disabilities (NICHCY)
7926 Jones Branch Drive
McLean, VA 22102
(800) 999-5599
(703) 893-6061
(703) 893-8614 (TDD)

**Epilepsy**
Harmon Putter
Executive Director
Epilepsy Foundation of Long Island
550 Stewart Avenue
Garden City, NY 11530
(516) 794-5500

**Exceptional Children**
Council for Exception Children (CEC)
1920 Association Drive
Reston, VA 22091
(703) 620-3660

**Handicapped**
National Information Center for Handicapped Children And Youth
P.O. Box 1492
Washington, DC 20013

**Head Injury**
New York State Head Injury Association
855 Central Avenue
Albany, NY 12206
(518) 459-7911
(800) 228-8201 (In NY)

**Learning Disabilities**
National Center for Learning Disabilities
381 Park Avenue South
Suite 1420
New York, NY 10016
(212) 545-7510

Lynn Altamura, President
Learning Disabilities Association of NY
90 South Swan Street
Albany, NY 12210
(518) 436-4633

**Mental Health**
Bonnie Primus Cohen
Executive Director
Mental Health Association in NY State
75 New Scotland Avenue
Room 155
Albany, NY 12208
(518) 434-0439

Jerry Klein, President
Alliance for the Mentally Ill of NY State
73 Regina Road
Monsey, NY 10952
(518) 462-2000

**Mental Retardation**
NY State Association for Retarded Children, Inc.
393 Delaware Avenue
Delmar, NY 12054
(518) 439-8311

New York State Association for Retarded Citizens (ARC)
393 Delaware Avenue
Delmar, NY 12054
(518) 439-8311

**Speech and Hearing**
Edward Webb, President
NY State Speech-Lang-Hearing Association
111 Washington Avenue
Albany, NY 12210
(518) 463-5272

**Spina Bifida**
Spina Bifida Association of
Mid-Huson Valley
390 North Montgomery Street
Newburgh, NY 12550
(914) 561-7113

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## UNIVERSITY AFFILIATED PROGRAM

Madeline W. Appell
Director, DD Center
St Lukes - Roosevelt
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College of Physicians &
Surgeons
Columbia University
428 West 59th Street
New York, NY 10019
(212) 523-6230

Henryk M. Wisniewski, M.D.
Director
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(718) 494-0600

Ansley Bacon, Director
MRI/University Affiliated
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Westchester County Medical
Center
Valhalla, NY 10595
(914) 285-8204

Brian Rogers, M.D.
Director
Robert Warner Rehabilitation
Center
S.U.N.Y. at
Buffalo/Children's Hospital
of Buffalo
936 Delaware Avenue
Buffalo, NY 14209
(716) 878-7440

Herbert J. Cohen, M.D.
Director
University Affiliated
Facility
Rose F. Kennedy Center
Albert Einstein College of
Medicine
Yeshiva University
1410 Pelham Parkway South
Bronx, NY 10461
(212) 430-2325

Philip W. Davidson, Director
University Affiliated
Program for DD
University of Rochester
Medical Center
601 Elmwood Avenue, Box 671
Rochester, NY 14642
(716) 275-2986

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## PARENT TO PARENT

Joan M. Watkins
Director
Parent Network Center
1443 Main Street
Buffalo, NY 14209
(716) 885-1004

Marilyn Wessels, Director
Senate Select Committee on
the Disabled
Legislative Office Building
Albany, NY 12247
(518) 455-2096

Dorothy Stone, Project
Coordinator
Family Support Project for
the DD
North Central Bronx Hospital
3424 Kossuth Avenue, Room
15A10
Bronx, NY 10467
(212) 519-4796
(212) 519-4797

## OTHER ORGANIZATIONS

Edward Kershaw, President
New York Easter Seal Society
845 Central Avenue
Albany, NY 12206
(518) 438-8785

S.A.T.
Admissions Testing Program
Services for Handicapped
Students
P.O. Box 6226
Princeton, NY 08541
(609) 771-7137

## ADVOCACY AGENCIES

Statewide Youth Advocacy
Children's Law Center
40 Sheridan Avenue
Albany, NY 12210
(518) 436-8525

Advocates for Children of
New York (NY City)
24-16 Bridge Plaza South
Long Island City, NY 11101
(718) 729-8866

Resources for Children with
Special Needs
200 Park Avenue South
New York, NY
(212) 677-4650